Supreme Court, U.S.
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CLERK

No. 95-388

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1995

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ANTONY BROWN, *et al.*,
*Petitioners,*

v.

PRO FOOTBALL, INC.,
d/b/a WASHINGTON REDSKINS, *et al.*,
*Respondents.*

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**On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

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## JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED SEPTEMBER 11, 1995**
**CERTIORARI GRANTED DECEMBER 8, 1995**

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# UNITED STATES DISTRICT COURT
# FOR THE DISTRICT OF COLUMBIA

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BROWN, *et al.*,

v.

PRO FOOTBALL, INC., *et al.*

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## CIVIL DOCKET FOR CASE NO. 90-CV-1071

| Date | No. | PROCEEDINGS |
|---|---|---|
| 5/9/90 | 1 | COMPLAINT filed; Exhibits (2); summons (29) issued (dot) [Entry date 05/11/90] |
| | | * * * * |
| 6/1/90 | 7 | AMENDED COMPLAINT by plaintiffs; jury demand [1-1] (ks) [Entry date 06/04/90] |
| 6/11/90 | 8 | ANSWER by all defendants to amended complaint (ks) [Entry date 06/12/90] |
| | | * * * * |
| 9/10/90 | 30 | MOTION by plaintiffs to strike, or for partial summary judgment (ks) [Entry date 09/11/90] |
| 9/10/90 | 31 | NOTICE OF FILING by plaintiffs of statement of material facts not in genuine dispute and supporting exhibits (1-35), and memorandum in support of plaintiffs' motion to strike, or for partial summary judgment (FILED UNDER SEAL IN ROOM 1800) (ks) [Entry date 09/11/90] |
| | | * * * * |
| 10/19/90 | 45 | MOTION by defendants for summary judgment; and in opposition to plaintiffs' motion to strike (FILED UNDER SEAL IN ROOM 1800) (ks) [Entry date 10/23/90] |

| Date | No. | PROCEEDINGS |
|---|---|---|
| 10/29/90 | 46 | MEMORANDUM by plaintiffs in support of of motion to strike [30-1] by ANTONY BROWN, motion for partial summary judgment [30-2] by ANTONY BROWN; and in opposition to defendants' motion for summary judgment (ks) |
| | | * * * * |
| 12/17/90 | 52 | MOTION by plaintiffs for summary judgment; Exhibits (13) (MEMORANDUM IN SUPPORT OF MOTION, AND SUPPLEMENTAL STATEMENT OF MATERIAL FACTS, AND SUPPLEMENTAL EXHIBITS (13) FILED UNDER SEAL IN ROOM 1800) (ks) [Entry date 12/18/90] |
| | | * * * * |
| 6/4/91 | 71 | MEMORANDUM OPINION by Judge Royce C. Lamberth striking nonstatutory labor exemption defense (N) (dot) [Entry date 06/10/91] |
| 6/4/91 | 72 | ORDER by Judge Royce C. Lamberth: denying motion for summary judgment on the nonstatutory labor exemption defense [45-1] by NFL, granting motion for partial summary judgment on the nonstatutory labor exemption [30-2] by ANTONY BROWN (N) (dot) [Entry date 06/11/91] |
| | | * * * * |
| 7/5/91 | 78 | RESPONSE by defendants in opposition to motion for summary judgment [52-1] by ANTONY BROWN; exhibits (7) (dot) [Entry date 07/10/91] |
| | | * * * * |
| 7/15/91 | 80 | REPLY by plaintiffs in support of motion for summary judgment [52-1] by ANTONY BROWN; exhibits (14) (cjp) [Entry date 07/18/91] |
| | | * * * * |

| Date | No. | PROCEEDINGS |
|---|---|---|
| 3/10/92 | 94 | MEMORANDUM OPINION by Judge Royce C. Lamberth (N) (fle) |
| 3/10/92 | 95 | ORDER by Judge Royce C. Lamberth: granting motion for summary judgment [52-1] by ANTONY BROWN; entering summary judgment on behalf of the plaintiff class against the NFL and the 28 NFL Club defendants. (N) (fle) |
| | | * * * * |
| 3/16/92 | 97 | MOTION filed by defendants for reconsideration, or, in the alternative, certification for interlocutory review of this Court's memorandum opinion of 3/10/92 (dot) [Entry date 03/18/92] |
| | | * * * * |
| 4/3/92 | 103 | RESPONSE by plaintiffs in opposition to motion for reconsideration [97-1] by defendants (dot) [Entry date 04/06/92] |
| 4/6/92 | 104 | REPLY MEMORANDUM by defendants in support of motion for reconsideration [97-1], or motion for certification for interlocutory review of this Court's memorandum opinion of 3/10/92 [97-2] by defendants (dot) [Entry date 04/07/92] |
| | | * * * * |
| 9/2/92 | 254 | MEMORANDUM OPINION AND ORDER by Judge Royce C. Lamberth: denying motion for reconsideration [97-1] by defendants, denying motion for certification for interlocutory review of this Court's memorandum opinion of 3/10/92 [97-2] by defendants. (N) (mal) |
| 9/2/92 | 255 | PRETRIAL STATEMENTS (joint) by defendants and plaintiffs; exhibits (26) (adc) [Entry date 09/03/92] |
| | | * * * * |

| Date | No. | PROCEEDINGS |
|---|---|---|
| 9/21/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 begun and continued to 9:30 9/22/92 reporter: Theresa Sorensen (fle) [Entry date 09/22/92] |
| 9/22/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:00 9/23/92 reporter: Theresa Sorensen (fle) |
| | | * * * * |
| 9/23/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:30 9/24/92 reporter: Theresa Sorensen (fle) [Entry date 09/24/92] |
| 9/24/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:30 9/25/92 reporter: Theresa Sorensen (fle) |
| | | * * * * |
| 9/25/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:00 9/28/92 reporter: Theresa Sorensen (fle) [Entry date 09/28/92] |
| | | * * * * |
| 9/28/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:00 9/29/92 reporter: Theresa Sorensen (fle) |
| | | * * * * |
| 9/29/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:30 9/30/92 reporter: Theresa Sorensen (fle) [Entry date 09/30/92] |
| | | * * * * |

| Date | No. | PROCEEDINGS |
|---|---|---|
| 9/30/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:30 10/1/92 reporter: Theresa Sorensen (fle) |
| | | * * * * |
| 10/1/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:00 10/2/92 reporter: Theresa Sorensen (fle) |
| | | * * * * |
| 10/2/92 | — | JURY TRIAL before Judge Royce C. Lamberth same jury of 8 resumed and continued to 9:30 10/5/92 reporter: Theresa Sorensen (fle) |
| 10/5/92 | — | JURY DELIBERATIONS resumed and concluded Judge Royce C. Lamberth; verdict for plaintiffs against the defendants. reporter: Theresa Sorensen (fle) |
| 10/5/92 | 325 | JUDGMENT ON THE VERDICT FOR 235 PLAINTIFFS in individual amounts against the defendants. (N) (fle) [Edit date 10/06/92] |
| | | * * * * |
| 5/12/93 | — | PERMANENT INJUNCTION against defendants; permanently enjoining defendants from agreeing among themselves, from conspiring, and/or from performing any act in furtherance of any agreement or conspiracy, to establish, whether overtly or otherwise, a uniform regular-reason salary for any category of players whom defendants may at any time employ. (fle) [Entry date 05/13/93] |
| | | * * * * |

| Date | No. | PROCEEDINGS |
|---|---|---|
| 9/10/93 | 395 | NOTICE OF APPEAL by defendants from order [364-1] entered on: 5/13/93. The fee was previously paid in USCA No. 93-7102 (filed 6/9/93). Copy mailed to Joseph A. Yablonski. (dot) [Entry date 09/14/93] |

# UNITED STATES COURT OF APPEALS
# FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

BROWN, *et al.*,
*Plaintiffs-Appellees,*

v.

PRO FOOTBALL, INC.,
d/b/a WASHINGTON REDSKINS, *et al.*,
*Defendants-Appellants.*

---

**CIVIL DOCKET FOR CASE NOS. 93-7165 and 94-7071**

| Date | PROCEEDINGS |
|---|---|
| 9/27/93 | CIVIL-PRIVATE CASE docketed. Notice of Appeal filed by Appellants Pro Football, Inc., *et al.* [23353-1] (wmw) [93-7165] |
| | * * * * |
| 10/20/93 | INITIAL SUBMISSIONS filed by Appellants Pro Football, Inc., *et al.*, in 93-7165, [26430-1]: docketing statement; certificate of counsel; statement of issues; lower court decision; deferred appendix notice (Deferred Appendix needed=n). (jth) [93-7165] |
| | * * * * |
| 9/2/94 | BRIEF filed by Appellants in 93-7165 and 94-7071 [70397-1]. Copies: 15. Certificate of service date 9/2/94. [93-7165, 94-7071] (wmw) |
| 9/2/94 | JOINT APPENDIX filed by Appellees Antony Brown, *et al.*, and Appellants in 93-7165 and 94-7071 [70414-1]. Copies: 10. [VOLUMES I through VII] Certificate of service date 9/2/94. [93-7165, 94-7071] (wmw) |
| | * * * * |

| Date | PROCEEDINGS |
|---|---|
| 9/28/94 | PER CURIAM ORDER filed granting motion leave to file motion to allow amicus filed by Ntl Basketball Assoc, Nt. Hockey Leag, Natl Basketball Assn, Natl Hockey Leag [71187-1] in 94-7071, 93-7165 directing Clerk to file non-party motion to allow amicus [71174-1] in 93-7165, 94-7071 granting non-party motion to allow amicus filed by Nt. Hockey Leag, Natl Basketball Assn, Natl Hockey Leag, Ntl Basktball Assoc [71174-1] in 93-7165, 94-7071. Before Judges Edwards, Wald, Randolph. [93-7165, 94-7071] (cwc) |
| 9/28/94 | Per order lodged brief of amicus NBA and NHL [71178-1] in 93-7165, [71178-1] and in 94-7071 is filed. [93-7165, 94-7071] (cwc) |
| 9/28/94 | Per order lodged non-party motion to allow amicus (NBA and NHL) [77174-1] in 93-7165, non-party motion to allow amicus (NBA and NHL) [71174-1] in 94-7071 is filed. [93-7165, 94-7071] (cwc) |
| | * * * * |
| 10/4/94 | BRIEF filed by Appellees in 93-7165 and 94-7071 [76239-1]. Copies: 15. Certificate of service date 10/4/94. [93-7165, 94-7071] (wmw) |
| | * * * * |
| 10/12/94 | PER CURIAM ORDER filed granting non-party motion to allow amicus filed by Natl Basketball Plyr Assn., Natl Hockey Leag Ply Assn. [76957-1] in 93-7165, 94-7071. Before Judges Edwards, Wald, Randolph. [93-7165, 94-7071] (cwc) |
| | * * * * |
| 10/17/94 | BRIEF filed by Amicus Curiae Natl Basketball Plyr and Amicus Curiae Natl Hockey Leag Ply in 93-7165 and 94-7071 [78722-1]. Copies: 15. Certificate of service date 10/17/94. [93-7165, 94-7071] (wmw) |
| | * * * * |

| Date | PROCEEDINGS |
|---|---|
| 10/25/94 | REPLY BRIEF filed by Appellants in 93-7165 and 94-7071 [80591-1]. Copies: 16. Certificate of service date 10/25/94. [93-7165, 94-7071] (wmw) |
| | * * * * |
| 11/17/94 | ORAL ARGUMENT HELD before Edwards, Wald, Randolph. [93-7165, 94-7071] (jas) |
| | * * * * |
| 3/21/95 | JUDGMENT for the reasons in the accompanying opinion reversing [111665-1] and remanding case to the DC [111665-2]. Before Judges Edwards, Wald, Randolph. [93-7165, 94-7071] (edb) |
| 3/21/95 | OPINION (30 pgs) for the Court filed by Judge Edwards, DISSENTING OPINION (25 pgs) filed by Judge Wald. [93-7165, 94-7071] (edb) |
| | * * * * |
| 4/19/95 | PETITION for rehearing [118426-1] and SUGGESTION for rehearing in banc [118426-2] in 93-7165 and 94-7071 (20 copies) filed by Appellees Antony Brown, *et al.* [93-7165, 94-7071] (wmw) |
| | * * * * |
| 5/5/95 | BRIEF filed by Amicus USA in 93-7165 and 94-7071 in support of petition for rehearing [122076-1]. Copies: 20. Certificate of service date 5/5/95. [93-7165, 94-7071] (wmw) |
| | * * * * |
| 6/12/95 | PER CURIAM ORDER filed denying appellees' petition for rehearing [118426-1]. (Mandate may issue on or after 6/20/95 in 93-7165 and 94-7071). Before Judges Edwards, Wald and Randolph. [CIRCUIT JUDGE WALD WOULD GRANT THE PETITION FOR REHEARING]. [93-7165, 94-7071] (jth) |

| Date | PROCEEDINGS |
|---|---|
| 6/12/95 | PER CURIAM ORDER, In Banc, filed denying the suggestion for rehearing in banc [118426-2]. Before Judges Edwards, Wald, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel. [A STATEMENT OF CIRCUIT JUDGE TATEL CONCURRING IN THE DENIAL OF REHEARING IN BANC IS ATTACHED. CIRCUIT JUDGE WALD WOULD GRANT THE SUGGESTION. A STATEMENT BY JUDGE WALD IS ATTACHED]. [93-7165, 04-7071] (jth) |
| | * * * * |
| 6/27/95 | MANDATE ISSUED to Clerk, District Court [132532-1] in 93-7165 and 94-7071. [93-7165, 94-7071] (jas) |

[NFL Logo]

NFL MANAGEMENT COUNCIL
Representing the Member Clubs of the
National Football League

April 7, 1989

Mr. Eugene Upshaw
NFL PLAYERS ASSOCIATION
2021 L Street, NW
Washington, DC 20035

Dear Gene:

One resolution adopted at the League's recent meeting in Palm Desert concerns the clubs' interest in establishing a six-player developmental squad next season. Copy of 1989 Resolution G-2, adopted Wednesday, March 22, is enclosed.

The Management Council desires to negotiate with your union on the terms and conditions applicable to developmental squad players.

We suggest a meeting on either April 12, April 14, during the week of April 17 or on any other date reasonably soon thereafter to discuss these matters.

Please give me a call in this connection at your earliest convenience.

Very truly yours,

/s/ Jack
J. M. DONLAN
Executive Director

JMD:db

WEDNESDAY MORNING, MARCH 22

The meeting reconvened in Executive Session. The combined Long Range/Finance Committee recommendations were reviewed and the following action was taken:

1989 RESOLUTION
G-2

RESOLVED, that appropriate sections of the NFL Constitution and Bylaws be amended to reflect the following:

1. Effective from passage of this resolution until June 1, 1989, clubs will be limited to a year-round roster limit of 90 players and thereafter will be limited to a year-round roster limit of 80 players on the following combined lists: Active, Inactive, Reserve/Injured, Reserve/Physically Unable to Perform, Reserve/Non-Football Illness/Injury, Reserve/Suspended, Developmental Squad, Exempt, and Future. The 80-player limit will not include any players on the following lists: Reserve/Retired, Reserve/Did Not Report, Reserve/Left Squad, Reserve/Military, unsigned draft choices, unsigned Veteran Free Agents, Unprotected players, and players who have been declared ineligible to participate (suspended) by the Commissioner.

2. Clubs will be required to reduce their Active Lists to 60 players by 4 p.m., New York time, on the Tuesday after the third pre-season weekend and to 47 players by 12 noon, New York time, on the Monday before the first regular season game. (For 1989, the applicable dates are Tuesday, August 29, for the cut to 60 and Monday, September 4, for the cut to 47).

Clubs must declare an Active List of 45 players and Inactive List of two players no later than one hour prior to kickoff of each game.

All waiver requests at the final cutdown will be Procedural Recall; clubs will have until 12 noon, NYT, on Tuesday to file claims.

3. After 4 p.m., NYT, on Tuesday, September 5, clubs may establish a Developmental Squad of up to six players by signing free agents to special services contracts of no more than $—— per week. Such contracts will also include a negotiated salary that the player will receive if the club subsequently decides to add the player to its Active List and signs him to an NFL Player Contract. The following will apply to the Developmental Squad:

a. Only players whose experience is designated as "R" (rookie) or "1" (first-year player) will be eligible for the Developmental Squad. (A "Rookie" is defined as a player who has not previously been under contract to a professional football team. Players who have been active in another professional football league or whose NFL experience is limited to training camp or fewer than three games on an Active List during the regular season or postseason are "first-year players.")

b. If a club signs a player on its Developmental Squad to its Active List, it must either use one of its five free activations or request procedural recall waivers. NFL Players Contracts executed with players who are subject to procedural recall waivers are subject to customary restrictions (no guarantees, no performance bonuses, etc.).

c. No player may be moved directly from a club's Active List to its Developmental Squad. Such players must first be waived and terminated, then signed to a club's Developmental Squad.

d. Clubs may not replace any injured Developmental Squad player until the club terminates him. Even if unable to practice, injured Developmental Squad players will continue to count within the six-player limit.

e. Clubs are permitted to terminate a Developmental Squad player at any time by notification to

the League Office, and the club may sign another player to its Developmental Squad. The League's waiver system will not apply to such termination.

4. Clubs may not sign players for their Future List until the day after the Super Bowl.

5. The following will apply to players who are placed on Reserve/Injured with "major" (four-week) injuries:

a. A player placed on Reserve/Injured prior to or concurrent with the final roster reduction may not return to his club's Active List in that season under any circumstances. Clubs may request waivers on such players at any time or retain them on their Reserve/Injured List for the rest of the season. Such players may not practice.

b. Players placed on Reserve/Injured after the final roster reduction will be eligible to return to the club's Active List after a minimum of six games, either by free activation or by procedural recall waivers. Clubs will be permitted five free activations during the regular season.

For such players, clubs will have two options: option one is to begin practice after a minimum of four weeks, and option two is to begin practice after a minimum of six weeks on Reserve/Injured.

*Option One*: If a player begins practice after a minimum of four weeks, the club is permitted to practice the player for a maximum of two weeks, after which it must either return him to the Active List or request waivers, unless he has been injured; if injured, the player may be retained on Reserve/Injured, but he will not be eligible to practice or to be activated thereafter.

*Option Two*: If a player begins practice after a minimum of six weeks on Reserve/Injured, the

player is eligible to practice for the rest of the season, but he counts against the club's Developmental Squad limit of six players.

6. Players who are placed on Reserve/Injured with "minor" (less than four week) injuries must be placed on waivers as soon as they are healthy.

*Effect*:

Establishes a new system of player-personnel procedures involving squad size and Reserve/Injured, and introduces a six-man Developmental Squad.

Motion by Philadelphia, second by Atlanta.

VOTE:

22-5-1 (Dallas, Los Angeles Raiders, New York Jets, Pittsburgh, Washington, No; Miami, Passed)

[NFL Logo]

NFL MANAGEMENT COUNCIL
Representing the Member Clubs of the
National Football League

May 18, 1989

Mr. Eugene Upshaw
NFL PLAYERS ASSOCIATION
2021 L Street, NW
Washington, DC 20036

Dear Gene:

Over a month has now elapsed since April 7, 1989 when we sent to you a copy of Resolution G-2 relating to the developmental squad as adopted by the clubs at the winter League Meeting. At that time we stated that we wished to negotiate with the NFLPA concerning terms and conditions for developmental squad players. On April 26 Dick Berthelsen indicated he would check with you regarding a convenient meeting date, and subsequently, on April 28, we attempted to answer some of Dick's questions in writing, again urging a prompt reply. On May 2, I again mentioned this subject to you in Washington during our Board hearings, as did Jim Conway in a separate discussion. To date, we have had no response from you or from Dick on this subject.

This letter represents a second formal notification to you that the Management Council wishes to meet and confer with your organization in accordance with our mutual obligations under the National Labor Relations Act for the purpose of negotiating terms and conditions applicable to developmental squad players to be employed by the clubs beginning with the 1989 season. Specifically, we now propose the following terms and conditions for developmental squad players:

1. Make editorial modifications as necessary throughout the 1982 Collective Bargaining Agreement, as amended effective February 1, 1989, to reflect our intention that all currently effective work rules and benefits, e.g. pension, insurance, shall apply to developmental players, except as indicated otherwise below.

2. Article XXII, *Salaries*, shall not apply. In lieu thereof, established special services contract providing for salaries of $1,000 per week, prorated on a daily basis.

3. Article XXVIII, *Post-Season Pay*, shall not apply.

We remain ready and available to confer with you in good faith at reasonable times for the purpose of negotiating an agreement covering terms and conditions of employment for developmental players. We look forward to hearing from you in that regard at the earliest possible time.

Very truly yours,

/s/ Jack
J. M. DONLAN
Executive Director

JMD:db

[NFLPA Logo]

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION

Via fax
May 30, 1989

Mr. Jack Donlan
NFL MANAGEMENT COUNCIL
410 Park Avenue
New York, N.Y. 10025

RE: Developmental Squad

Dear Jack:

I received your letter of May 18, 1989 concerning the clubs' decision to have developmental squads starting this season.

The NFLPA is willing to agree that players can be listed on a developmental squad of an NFL Club if they have all of the benefits and protections which players on the Active List have. This, of course, would include the right to negotiate their own salaries.

Article XIX of the 1982 CBA so provided with regard to players on the Inactive List, and that concept seems to apply to developmental players as well.

I suggest we discuss this matter when we see each other next week.

Sincerely,

/s/ Gene Upshaw
GENE UPSHAW
Executive Director

GU:afs

[NFL Logo]

NFL MANAGEMENT COUNCIL
Representing the Member Clubs of the
National Football League

To: Hugh Culverhouse
Bill Bidwill
Mike Brown
Well Mara
Joe Robbie
Dan Rooney

FROM: Jack Donlan

SUBJECT: Upshaw Meeting

DATE: June 16, 1989

Jim Conway, Dennis Curran and I met with Gene Upshaw today from 12:15 to 2:30 p.m. to discuss the development squad subject. (This meeting, you'll recall, was in response to our several written requests to Gene in April and May, and was originally scheduled for last week's Retirement Board Meeting but rolled to today at Upshaw's request.)

Gene had Tom DePaso with him, but neither Allen nor Berthelsen, and the meeting was cordial, businesslike and low-keyed. We spent over an hour taking the union through our proposal, its purpose, how it works, how it relates to the new 80 player limits and IR rules, etc. Gene indicated he fully understood the developmental squad but could not agree to any arrangement that eliminated the right of any player to negotiate his individual salary. Upshaw said that no matter what salary level we proposed to pay developmental players, whether it was our $1,000 weekly or a higher number, the union would not "in principle" permit two classes of players

to exist, one with individual bargaining rights and one without. For implementation purposes, the issue is clearly at impasse.

Gordon Forbes' column in "USA Today" this morning quoted Gene as hinting at an interest in bargaining on a broader scale. When we raised the subject with him, he was somewhat equivocal. We had the general impression that Gene was genuinely eager to get back to bargaining. However, he was careful to maintain his position that a "West Coast" type system freeing every player at some point in his career was necessary. Ultimately, however, he agreed that a further meeting made sense, and he agreed to firm up a meeting early next week during the June 28-30 period or during the week of July 10.

/s/ Jack
JACK DONLAN
Executive Director

JMD:db

[NFL Logo]

NFL MANAGEMENT COUNCIL
Representing the Member Clubs of the
National Football League

To: File

FROM: Jack Donlan

SUBJECT: Upshaw Meeting—Developmental Squad

DATE: June 30, 1989

Met with Gene Upshaw on June 16th. Gene was accompanied by Tom DePaso, Conway and Curran were also in attendance. Had a full discussion of the developmental player, which was the purpose of the meeting.

Gene stated a number of times that the union could never accept the position where some players were not free to negotiate their own contracts. I mentioned to Gene that during the course of regular negotiations we had an open discussion about an entry level wage scale; that back in 1985, when the clubs were reducing their rosters from 49 to 45, Gene suggested having 4 players at a nominal salary ($400-$500); and that recently Braman said that Gene had again broached the subject of the $500-game type players. Gene had no recollection of the conversation with Braman, was aware of the conversation in '85 and also during the negotiations but had no response as to why the Union was willing to entertain a position then which would have some players not able to negotiate their contracts but now is unalterably opposed to it.

The one thing left hanging was the Developmental Player Contract which we didn't have in written form at that time. I sent it to Gene today, June 30th.

During the course of the conversation on the 16th, Gene indicated and he also was quoted in the press as saying

we shouldn't be negotiating one issue by itself but rather it should be part of the larger package. I agreed with that and told him I had been trying to get him to the bargaining table and he, in my opinion, has been avoiding the same. That generated a discussion about the system in which Gene believes the he can be flexible but within his own framework—the framework being that all players must be free at some time during the course of their careers—that once that is acceptable, he is flexible within that concept and mentioned again an entry level wage scale. My response was that we didn't think we had to accede to that position about all players being free at some time and we thought we were far more flexible with the number of different concepts we had proposed, including Plan B. Both Gene and I agreed it would be worth exploring further rather than just sitting and waiting for the court decision.

Gene was tied up the whole following week (week of the 19th in Texas) and was tied up on Monday and Tuesday (June 26-27) in depositions. Gene said he would call me about getting together on either June 28-29-30 or the week of July 10th. Not having heard from Gene, I called his office today to find out what the schedule is. He is out of the office, not expected in, may call in, I left a message and have sent his a note assuming we are going to be getting together the week of July 10th.

JMD:db

[NFLPA Logo]

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION

July 6, 1989
Via fax

Mr. Jack Donlan
Executive Director
NFL MANAGEMENT COUNCIL
410 Park Avenue
New York, NY 10022

RE: DEVELOPMENTAL SQUAD

Dear Jack:

I am writing to confirm our discussion on Friday, June 16, 1989 concerning the above subject. You told Tom DePaso and me that you wanted to sign developmental squad players to a standard form contract (yet to be developed) and pay them all a fixed wage of $1000 per week. You further stated that a player being placed in the developmental category would have to sign an NFL Player contract which would apply if he is activated, and that contract(s) could be for a multi-year term. Once on developmental, you also stated that the player would be committed to the club for the balance of the year in question, except that the club could terminate the developmental player at any time for any reason.

Tom and I rejected these conditions. We stated that all players, including developmental, should have the right to negotiate salary terms, and that no fixed wage for any group of players is acceptable to the NFLPA. Also, we are against restricting a player to one term if he can be an active player with another. Moreover, it is our position that all players are entitled to full benefits, whether they are Active or in some other category.

I also asked you in our meeting if you had any new position on free agency. You said yes, that your "new"

position was Plan B. I responded that it was our position that at some point in their careers, all players should have the right to be free. I asked you if you could identify such a point at which a player could be free, and you said at no point, except as provided by Plan B.

We discussed possible future meeting dates including the week of July 10.

Sincerely,

/s/ Gene Upshaw
GENE UPSHAW
Executive Director

GU:afs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 90-1071 (RCL)
Jury Trial Demanded

ANTHONY BROWN
36 White Oak Lane
Stamford, CT 06905

JAMES BISHOP
5520 Forest Isle
New Orleans, LA 70131

JOHN BUDDENBERG
55861 Bel-Haven
Bellaire, OH 43906

GARY COUCH
1112 Brown Street
Davenport, IA 52803

CRAIG DAVIS
8515 Apricot
New Orleans, LA 70118

RICKY ANDREWS
8541 Midvale
Seattle, WA 98103

THOM KAUMEYER
11239 N.E. 36th, #324
Bellevue, WA 98004

WESLEY PRITCHETT
3873 Roswell Road #22
Atlanta, GA 30342

JOHN SIMPSON
2401 Spring Creek #1102
Plano, TX 75023

Individually, and on Behalf of
All Class Members,

*Plaintiffs,*

v.

PRO FOOTBALL, INC., d/b/a
WASHINGTON REDSKINS
c/o CT Corporation
1025 Vermont Avenue, N.W.
Washington, D.C. 20005

THE FIVE SMITHS, INC., d/b/a
ATLANTA FALCONS
Suwanee at I-85
Suwanee, GA 30174

BUFFALO BILLS, INC., d/b/a
BUFFALO BILLS
One Bills Drive
Orchard Park, NY 14127

CHICAGO BEARS FOOTBALL CLUB, INC., d/b/a
CHICAGO BEARS
55 East Jackson Blvd.
Chicago, IL 60604

CINCINNATI BENGALS, INC., d/b/a
CINCINNATI BENGALS
200 Riverfront Stadium
Cincinnati, OH 45202

CLEVELAND BROWNS, INC., d/b/a
CLEVELAND BROWNS
100 West Tenth Street
Wilmington, DE 19801

DALLAS COWBOYS FOOTBALL CLUB, LTD., d/b/a
DALLAS COWBOYS
2355 Stemmons Freeway
Dallas, TX 75207

PDB Sports, Ltd., d/b/a
Denver Broncos
5700 Logan Street
Denver, CO 80216

The Detroit Lions, Inc., d/b/a
Detroit Lions
34th Floor
100 Renaissance Center
Detroit, MI 48243

The Green Bay Packers, Inc., d/b/a
Green Bay Packers
1265 Lombardi Avenue
Green Bay, WI 54303

Houston Oilers, Inc., d/b/a
Houston Oilers
6910 Fanin
Box 1516
Houston, TX 77251-1516

Indianapolis Colts, Inc., d/b/a
Indianapolis Colts
8272 North Lincoln Avenue
Skoakie, IL 60077

Kansas City Chifes Football Club, Inc., d/b/a
Kansas City Chiefs
2800 Commerce Tower
Kansas City, MO 64105

The Los Angeles Raiders, Ltd., d/b/a
Los Angeles Raiders
332 Center Street
El Segundo, CA 90245

Los Angeles Rams Football Company, Inc.,
d/b/a Los Angeles Rams
2327 Lincoln Avenue
Anaheim, CA 92801

MIAMI DOLPHINS, LTD., d/b/a
MIAMI DOLPHINS
4770 Biscayne Blvd., Suite 1440
Miami, FL 33137

MINNESOTA VIKINGS FOOTBALL CLUB, INC., d/b/a
MINNESOTA VIKINGS
9520 Viking Drive
Eden Prairie, MN 55344

KMS PATRIOTS, L.P.,
d/b/a NEW ENGLAND PATRIOTS
Schaefer Stadium
Foxboro, MA 02035

THE NEW ORLEANS LOUISIANA SAINTS
LIMITED PARTNERSHIP, d/b/a
NEW ORLEANS SAINTS
1500 Poydras Street
New Orleans, LA 70112

NEW YORK FOOTBALL GIANTS, INC., d/b/a
NEW YORK GIANTS
Giants Stadium
East Rutherford, NJ 07073

NEW YORK JETS FOOTBALL CLUB, INC., d/b/a
NEW YORK JETS
598 Madison Avenue
New York, NY 10022

THE PHILADELPHIA EAGLES FOOTBALL CLUB, INC.,
d/b/a PHILADELPHIA EAGLES
Philadelphia Veterans Stadium
Broad Street and Pattison Ave.
Philadelphia, PA 19148

B & B HOLDINGS, INC., d/b/a
PHOENIX CARDINALS
51 West 3rd Street
Phoenix, AZ 85281

PITTSBURGH STEELERS SPORTS, INC., d/b/a
PITTSBURGH STEELERS
Three River Stadium
300 Stadium Circle
Pittsburgh, PA 15212

THE CHARGERS FOOTBALL COMPANY, d/b/a
SAN DIEGO CHARGERS
San Diego Jack Murphy Stadium
9449 Friars Road
San Diego, CA 92120

THE SAN FRANCISCO FORTY-NINERS, LTD., d/b/a
SAN FRANCISCO FORTY-NINERS
7620 Market Street
Youngstown, OH 44512

THE SEATTLE PROFESSIONAL FOOTBALL CLUB, d/b/a
SEATTLE SEAHAWKS
5305 Lake Washington Boulevard
Kirkland, WA 98033

TAMPA BAY AREA NFL FOOTBALL, INC., d/b/a
TAMPA BAY BUCCANEERS
One Buccaneer Place
Tampa, FL 33607

NATIONAL FOOTBALL LEAGUE
410 Park Avenue
New York, NY 10022

*Defendants.*

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**FIRST AMENDED CLASS-ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR TREBLE DAMAGES**

For their complaint in this action, Plaintiffs allege as follows:

*Nature of the Case*

1. This is a horizontal price-fixing case brought under the federal antitrust laws. Plaintiffs are professional foot-

ball players. Defendants are the member Clubs of the National Football League ("NFL" or "League") and the League itself. The NFL has a monopoly in the major professional football market.

2. In March 1989, Defendants agreed among themselves, through an amendment to the NFL Constitution and By Laws, to establish a six-person "Developmental Squad" for each Club and to fix the price that each Club would pay for the services of players assigned to the Developmental Squad. To implement their price-fixing agreement, Defendants later agreed that *all* Developmental Squal players would be required to sign an identical form contract. Defendants agreed among themselves to pay such players the flat amount of $1,000 for each week during the NFL's sixteen-week season, without regard to the fair market value of each player's services. No Club was permitted to pay a Developmental Squad player more than $1,000 per week, and all Developmental Squad contracts were required to be submitted to the NFL to police compliance with Defendants' conspiracy to restrain trade.

3. Plaintiff-players, who are among the most skilled in their profession, have been denied the right to sell their services in a competitive market. All Developmental Squad players have been compensated less than they would have been, absent Defendants' price-fixing combination and conspiracy, and thus have been injured in their "business" and "property" and are entitled to injunctive relief and to recover treble damages.

## JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over the claims asserted in the Complaint under the Sherman Antitrust Act, 15 U.S.C. § 1, under the Clayton Antitrust Act, 15 U.S.C. §§ 15, 26, and under 28 U.S.C. §§ 1331, 1337 and 2201.

5. Venue is proper in this Judicial District pursuant to the provisions of 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391. Each of the Defendants transacts business or is doing business within this Judicial District. All of the Defendant Clubs have participated in professional football games within the District of Columbia pursuant to schedules developed by the NFL, and all of the Defendants derive substantial revenues from business transacted within the District of Columbia. All of the Defendant Clubs have caused their games to be broadcast and telecast in this District pursuant to television contracts between the League and the major networks. The Clubs and Defendant NFL have participated in conferences and meetings, including League meetings, within the District of Columbia. Many of the acts done in furtherance of their conspiracy to restrain trade were committed or carried out or resulted in harm to Plaintiffs and members of the Plaintiff class within the District of Columbia.

## THE PARTIES

6. All of the Plaintiffs herein are players in the National Football League. During the 1989 professional football season, all of the Plaintiffs were, for all or part of the season, on the Developmental Squads of one or more of the Clubs in the NFL and accordingly were required to sign a form contract which fixed the price the Clubs would pay for their services at $1,000 per week. The names and addresses of the Plaintiffs and the Clubs with which they contracted during the 1989 NFL season are as follows:

| Name and Address | 1989 NFL Club(s) |
|---|---|
| Anthony Brown<br>36 White Oak Lane<br>Stamford, CT 06905 | Buffalo Bills |
| James Bishop<br>5520 Forest Isle<br>New Orleans, LA 70131 | Washington Redskins |

| Name and Address | 1989 NFL Club(s) |
|---|---|
| John Buddenberg<br>55861 Bel-Haven<br>Bellaire, OH 43906 | Cleveland Browns<br>Minnesota Vikings |
| Ricky Andrews<br>8541 Midvale<br>Seattle, WA 98103 | San Diego Chargers |
| Gary Couch<br>1112 Brown Street<br>Davenport, IA 52803 | Minnesota Vikings |
| Craig Davis<br>8515 Apricot<br>New Orleans, LA 70118 | San Diego Chargers |
| Thom Kaumeyer<br>11239 N.E. 36th, #324<br>Seattle, WA 98004 | Seattle Seahawks |
| Wesley Pritchett<br>3873 Roswell Road #22<br>Atlanta, GA 30342 | Buffalo Bills |
| John Simpson<br>2401 Spring Creek #1102<br>Plano, TX 75023 | New England Patriots |

7. Each Plaintiff brings this action in his own right to obtain relief for injuries to him in his trade and business and also brings this action on behalf a class of all Developmental Squad players in the NFL.

8. Defendants herein are Pro-Football, Inc., a Maryland corporation, which owns and operates the Washington Redskins within the District of Columbia, and the twenty-seven other member Clubs of the National Football League. Each of the NFL member Clubs listed below owns an NFL franchise for the operation of a professional football team for profit under the team name in the cities listed:

| NFL Member Club | Team Name | Principal Place of Business |
|---|---|---|
| The Five Smiths Inc.<br>a Georgia corporation | Atlanta Falcons | Atlanta, Georgia |
| Buffalo Bills, Inc.<br>a New York corporation | Buffalo Bills | Buffalo,<br>New York |

| NFL Member Club | Team Name | Principal Place of Business |
|---|---|---|
| Chicago Bears Football Club, Inc., a Delaware corporation | Chicago Bears | Chicago, Illinois |
| Cincinnati Bengals, Inc., an Ohio corporation | Cincinnati Bengals | Cincinnati, Ohio |
| Cleveland Browns, Inc., a Delaware corporation | Cleveland Browns | Cleveland, Ohio |
| Dallas Cowboys Football Club, Ltd., a Texas limited partnership | Dallas Cowboys | Dallas, Texas |
| PDB Sports, Ltd., a Colorado limited partnership | Denver Broncos | Denver, Colorado |
| The Detroit Lions, Inc., a Michigan corporation | Detroit Lions | Detroit, Michigan |
| Green Bay Packers, Inc., a Wisconsin corporation | Green Bay Packers | Green Bay, Wisconsin |
| Houston Oilers, Inc., a Texas Corporation | Houston Oilers | Houston, Texas |
| Indianapolis Colts, Inc., a Delaware corporation | Indianapolis Colts | Indianapolis, Indiana |
| Kansas City Chiefs Football Club, Inc., a Texas corporation | Kansas City Chiefs | Kansas City, MO |
| Los Angeles Raiders, Ltd., a California limited partnership | Los Angeles Raiders | Los Angeles, California |
| Los Angeles Rams Football Co., Inc., a Delaware corporation | Los Angeles Rams | Anaheim, California |
| Miami Dolphins, Ltd., a Florida limited partnership | Miami Dolphins | Miami, Floirda |
| Minnesota Vikings Football Club, Inc., a Minnesota corporation | Minnesota Vikings | Minneapolis, Minnesota |
| KMS Patriots, L.P., a Delaware limited partnership | New England Patriots | Boston, Massachusetts |

| NFL Member Club | Team Name | Principal Place of Business |
|---|---|---|
| The New Orleans Louisiana Saints Limited Partnership, a Texas limited partnership | New Orleans Saints | New Orleans, Louisiana |
| New York Football Giants, Inc., a New York corporation | New York Giants | East Rutherford, New Jersey |
| New York Jets Football Club, Inc., a Delaware corporation | New York Jets | New York, New York |
| The Philadelphia Eagles Football Club, Inc., a Delaware corporation | Philadelphia Eagles | Philadelphia, Pennsylvania |
| B & B Holdings, Inc., an Arizona corporation | Phoenix Cardinals | Phoenix, Arizona |
| Pittsburgh Steelers Sports, Inc., a Pennsylvania corporation | Pittsburgh Steelers | Pittsburgh, Pennsylvania |
| The Chargers Football Company, a California limited partnership | San Diego Chargers | San Diego, California |
| The San Francisco Forty-Niners, Ltd., a California limited partnership | San Francisco Forty-Niners | San Francisco, California |
| The Seattle Professional Football Club, a Washington limited partnership | Seattle Seahawks | Seattle, Washington |
| Tampa Bay Area NFL Football, Inc., a Florida corporation | Tampa Bay Buccaneers | Tampa Bay, Florida |

9. Defendant National Football League ("NFL") is an unincorporated association of the twenty-eight member Clubs. The NFL maintains its principal place of business at 410 Park Avenue, New York, New York.

## GENERAL ALLEGATIONS

10. All of the above-named Defendants are engaged in interstate commerce and all of the Club Defendants

are competitors in the market for the services of professional football players.

11. The NFL is and has been, at least since 1987, the only major professional football league in the United States. The NFL has been adjudicated to have monopoly power to control prices and to exclude competition from the major professional football market.

12. The member Clubs of the NFL have agreed among themselves to adopt and be bound by the terms and provisions of the NFL Constitution and By Laws ("NFL Constitution"). The Clubs have authorized the Commissioner of the NFL to oversee compliance with the provisions of its Constitution and to punish Clubs which violate its provisions.

13. On March 22, 1989, the member Clubs of the NFL, upon the recommendaton of the NFL's combined Long-Range/Finance Committee, adopted an amendment to the NFL Constitution: 1989 Resolution G-2, a copy of which is attached hereto as Exhibit A. This resolution authorized the member Clubs to establish on or after 4:00 p.m. on September 5, 1989, "a Developmental Squad of up to six players by signing free agents to special services contracts of no more than $—— per week."

14. On or about June 30, 1989, the NFL Clubs agreed among themselves to utilize a uniform contract form entitled "NFL Developmental Squad Player Contract," which fixed at $1,000 per week the price that all Clubs would pay for Developmental Squad players' services. (A copy of that form contract is attached hereto as Exhibit B.) Under the terms of the form contract, each executed agreement was required to be submitted to the NFL Commissioner, who was authorized to disapprove any nonconforming agreement.

15. Each Plaintiff was required to and did execute the NFL Developmental Squad Player Contract which provided for payment at the flat rate of $1,000 per week

of the NFL season during which each Plaintiff was on the Developmental Squad. This rate is far below the fair market value of the services of Plaintiffs and other Developmental Squad players. Moreover, this rate—effectively $16,000 per Season or year—is well below the $60,000 per Season minimum previously paid by NFL Clubs to such players.

16. As a result of Defendants' agreement among themselves, there was no price competition among the Clubs for the services of Plaintiffs and members of the Plaintiff-class. Developmental Squad players were to be paid and actually were paid the identical sum for their services, regardless of which Club signed them and regardless of their individual skills and talent.

17. Notwithstanding the fixed price paid by each Club for the services of each Developmental Squad player, the Clubs recognized the different intrinsic value of each player's services as being far in excess of the $1,000 per week amount actually paid to Plaintiffs. Under the League's constitutional amendment establishing the 1989 Developmental Squads and the form contract developed by the League, the Clubs were not restrained from negotiating a salary to be paid to Developmental Squad players in the event they were activated. Defendant Clubs did, in fact, agree to pay salaries from $60,000 to over $150,000 to various Plaintiffs and members of Plaintiff-class, $3,000 to $9,000 more per week than Plaintiffs and members of Plaintiff-class were actually paid.

18. In an open and competitive market—one not restrained by the NFL's Constitution and its uniform $1,000 per week price-fixing mechanism—Plaintiffs could have contracted for and received seasonal salaries between $45,000 and $160,000 per-player greater than the amounts they were actually paid during the 1989 Season.

19. Neither the concept of a Developmental Squad, nor the Developmental Squad Contract, nor the fixed $1,000 price the Clubs agreed among themselves to pay

to players who signed such contracts was ever contained in any collective bargaining agrement or any labor agreement of any kind. Moreover, neither the establishment of the Developmental Squad, nor the fixed price Defendants agreed among themselves to pay to players signed to Developmental Squad contracts, was ever approved or authorized by any collective bargaining representative for the players.

20. During the 1989 Season, Defendant Clubs executed well over two hundred (200) Developmental Squad contracts with various players. Pursuant to their agreement among themselves, the price paid by the Clubs for the services of each and every Developmental Squad player was $1,000 per week.

## CLASS ACTION ALLEGATIONS

21. This Complaint is filed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The claims of the Named-Plaintiffs are common and typical of those of the class, which is defined as follows:

> All professional football players who signed a Development Squad contract with an NFL Club and were paid a fixed price for their services pursuant to such a contract.

Plaintiffs will fairly and adequately represent the interests of the class which includes over two hundred (200) Developmental Squad players, located throughout the United States, the joinder of whom would be impracticable.

22. The issues of law and fact common to Named-Plaintiffs and the class include the following:

(a) whether each Defendant participated in the price-fixing scheme alleged herein;

(b) whether the Defendants' price-fixing agreement constituted a *per se* violation of the antitrust laws;

(c) whether Defendants' price-fixing agreement was contained in any labor agreement;

(d) whether, as a result of Defendants' violations of the antitrust laws, the members of the class were injured in their busines and property;

(e) whether the measure of damages each class member should recover from Defendants is the (trebled) differential between the amount a Club voluntarily agreed a player's services were worth per week and the fixed-price of $1,000 that was actually paid to each player; and

(f) whether Defendants' conduct should be enjoined.

23. The foregoing issues predominate over any questions affecting only individual players, and a class action is superior to other available methods, if any, for the fair and efficient adjudication of this controversy.

24. Prosecution of separate actions by members of the class would create a risk of inconsistent adjudications with respect to individual members of the class, which would establish varying and incompatible standards of conduct for the Defendants. Adjudication of Plaintiffs' claims would, as a practical matter, be dispositive of claims of members of the class. Defendants have, moreover, acted and refused to act on grounds common to all members of the class, making declaratory and injunctive relief appropriate with respect to the class as a whole.

## VIOLATIONS OF THE SHERMAN ANTI-TRUST ACT

25. By virtue of the foregoing, Defendants have engaged in a contract, combination, and conspiracy in unreasonable restraint of interstate commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

26. As a result of the foregoing contract, combination, and conspiracy among the Defendants to fix the prices to be paid by all Clubs for the services of highly

skilled professional athletes at $1,000 per week, Plaintiffs and members of the Plaintiff class have been deprived of the opportunity to market their services in a free and open market and have been injured and damaged in their business and property for which they are entitled to recover treble damages under Section 4 of the Clayton Act, 15 U.S.C. § 15.

27. Defendants' violations of the antitrust laws are continuing, and Plaintiffs accordingly seek permanent injunctive relief under Section 16 of the Clayton Act, as amended, 15 U.S.C. § 26, including an order which *inter alia* prevents reprisals or retaliation by Defendants against them and members of the class, enjoins similar future violations, and restores all rights Plaintiffs and members of the class would have enjoyed but for Defendants' violations of the antitrust laws.

WHEREFORE, Plaintiffs pray for the entry of orders and a judgment:

(a) Certifying this case as a class action under Rule 23 of the Federal Rules of Civil Procedure;

(b) Declaring that the price-fixing conduct of the Defendants violates the Sherman Act;

(c) Permanently enjoining Defendants from engaging in price-fixing for the services of professional football players;

(d) Declaring that all contracts between Plaintiffs and members of plaintiff-class and any NFL clubs are voidable at the option of the individual player, who shall thereafter be permitted to contract with any NFL Club;

(e) Enjoining Defendants from retaliation or punishment or group boycott of any Named-Plaintiff or class member for instituting, prosecuting, testifying, or participating in this action;

(f) Awarding to Plaintiffs and members of plaintiff-class damages for Defendants' violations of the Sherman

Act, such damages to be trebled pursuant to the Clayton Act;

(g) Awarding to Plaintiffs their litigation costs and expenses and attorneys' fees; and

(h) Granting such other relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ Joseph A. Yablonski
JOSEPH A. YABLONSKI
Bar #91777
DANIEL B. EDELMAN
Bar #75101
JOHN F. COLWELL
Bar #398719
YABLONSKI, BOTH & EDELMAN
1140 Connecticut Ave., N.W.
Suite 800
Washington, D.C. 20036
(202) 833-9060

Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs demand a jury trial of all damage claims.

/s/ Joseph A. Yablonski
JOSEPH A. YABLONSKI

## EXHIBIT A

## WEDNESDAY MORNING, MARCH 22

The meeting reconvened in Executive Session: The combined Long Range/Finance Committee recommendations were reviewed and the following action was taken:

### 1989 RESOLUTION
### G-2

RESOLVED, that appropriate sections of the NFL Constitution and Bylaws be amended to reflect the following:

1. Effective from passage of this resolution until June 1, 1989, clubs will be limited to a year-round roster limit of 90 players and thereafter will be limited to a year-round roster limit of 80 players on the following combined lists: Active, Inactive, Reserve/Injured, Reserve/Physically Unable to Perform, Reserve/Non-Football Illness/Injury, Reserve/Suspended, Developmental Squad, Exempt, and Future. The 80-player limit will not include any players on the following lists: Reserve/Retired, Reserve/Did Not Report, Reserve/Left Squad, Reserve/Military, unsigned draft choices, unsigned Veteran Free Agents, Unprotected players, and players who have been declared ineligible to participate (suspended) by the Commissioner.

2. Clubs will be required to reduce their Active Lists to 60 players by 4 p.m., New York time, on the Tuesday after the third pre-season weekend and to 47 players by 12 noon, New York time, on the Monday before the first regular season game. (For 1989, the applicable dates are Tuesday, August 29, for the cut to 60 and Monday, September 4, for the cut to 47).

Clubs must declare an Active List of 45 players and Inactive List of two players no later than one hour prior to kickoff of each game.

All waiver requests at the final cutdown will be Procedural Recall; clubs will have until 12 noon, NYT, on Tuesday to file claims.

3. After 4 p.m., NYT, on Tuesday, September 5, clubs may establish a Developmental Squad of up to six players by signing free agents to special services contracts of no more than $—— per week. Such contracts will also include a negotiated salary that the player will receive if the club subsequently decides to add the player to its Active List and signs him to an NFL Player Contract. The following will apply to the Developmental Squad:

a. Only players whose experience is designated as "R" (rookie) or "1" (first-year player) will be eligible for the Developmental Squad. (A "Rookie" is defined as a player who has not previously been under contract to a professional football team. Players who have been active in another professional football league or whose NFL experience is limited to training camp or fewer than three games on an Active List during the regular season or postseason are "first-year players.")

b. If a club signs a player on its Developmental Squad to its Active List, it must either use one of its five free activations or request procedural recall waivers. NFL Player Contracts executed with players who are subject to procedural recall waivers are subject to customary restrictions (no guarantees, no performance bonuses, etc.).

c. No player may be moved directly from a club's Active List to its Developmental Squad. Such players must first be waived and terminated, then signed to a club's Developmental Squad.

d. Clubs may not replace any injured Developmental Squad player until the club terminates him. Even if unable to practice, injured Develop-

mental Squad players will continue to count within the six-player limit.

e. Clubs are permitted to terminate a Developmental Squad player at any time by notification to the League Office, and the club may sign another player to its Developmental Squad. The League's waiver system will not apply to such termination.

4. Clubs may not sign players for their Future List until the day after the Super Bowl.

5. The following will apply to players who are placed on Reserve/Injured with "major" (four-week) injuries:

a. A player placed on Reserve/Injured prior to or concurrent with the final roster reduction may not return to his club's Active List in that season under any circumstances. Clubs may request waivers on such players at any time or retain them on their Reserve/Injured List for the rest of the season. Such players may not practice.

b. Players placed on Reserve/Injured after the final roster reduction will be eligible to return to the club's Active List after a minimum of six games, either by free activation or by procedural recall waivers. Clubs will be permitted five free activations during the regular season.

For such players, clubs will have two options: option one is to begin practice after a minimum of four weeks, and option two is to begin practice after a minimum of six weeks on Reserve/Injured.

*Option One*: If a player begins practice after a minimum of four weeks, the club is permitted to practice the player for a maximum of two weeks, after which it must either return him to the Active List or request waivers, unless he has

been injured; if injured, the player may be retained on Reserve/Injured, but he will not be eligible to practice or to be activated thereafter.

*Option Two*: If a player begins practice after a minimum of six weeks on Reserve/Injured, the player is eligible to practice for the rest of the season, but he counts against the club's Developmental Squad limit of six players.

6. Players who are placed on Reserve/Injured with "minor" (less than four week) injuries must be placed on waivers as soon as they are healthy.

*Effect*:

Establishes a new system of player-personnel procedures involving squad size and Reserve/Injured, and introduces a six-man Developmental Squad.

Motion by Philadelphia, second by Atlanta.

VOTE:

22-5-1 (Dallas, Los Angeles Raiders, New York Jets, Pittsburgh, Washington, No; Miami, Passed)

## EXHIBIT B

THIS CONTRACT IS BETWEEN ————, hereinafter "Player," and ———— corporation (limited partnership) (partnership), hereinafter "Club" operating under the name of the ———— as a member of the National Football League, hereinafter "League," in consideration of the mutual promises made by each to the other, Player and Club agree as follows:

1. This contract covers the 19— football season, and will begin on the date of execution and end on the day after the Super Bowl game played in January 19—, unless terminated earlier as specified in Paragraph 8.

2. Club employs Player as a member of its developmental squad and Player agrees to report for and participate fully in all practices, meetings and other football activities as directed by Club. Player will not participate in any football game not sponsored by the League unless the game is first approved by the League.

3. Player grants to Club and League, separately and together, the authority to use his name and picture for publicity and promotional purposes in newspapers, magazines, motion pictures, game programs and roster manuals, broadcasts and telecasts, and all other publicity and advertising media, provided such publicity and promotion does not in itself constitute an endorsement by Player of a commercial product. Player will cooperate with the news media, and will participate upon request in reasonable promotional activities of Club and the League.

4. For performance of Player's services and all other promises of Player, including Player's promises under Paragraph 9 and 16 in the event of activation, Club will pay Player One Thousand Dollars ($1,000.00) per week, prorated on a daily basis and payable on a weekly or bi-weekly basis as Club shall choose.

5. Player represents to Club that he is and will maintain himself in excellent physical condition. Player will

undergo a complete physical examination by the Club physician upon Club request, during which physical examination Player agrees to make full and complete disclosure of any physical or mental condition known to him which might impair his performance under this contract and to respond fully and in good faith when questioned by the Club physician about such condition. If Player fails to establish or maintain his excellent physical condition to the satisfaction of the Club physician, or make the required full and complete disclosure and good faith responses to the Club physician, then Club may terminate this contract.

6. If Player is injured in the performance of his services under this contract and promptly reports such injury to the Club physician or trainer, then Player will receive such medical and hospital care during the term of this contract as the Club physician may deem necessary, and will continue to receive his weekly compensation as specified in Paragraph 4 for so long, during the season of injury only and for no subsequent period, as Player is physically unable to perform the services required of him by this contract because of such injury.

7. Any compensation paid to Player under this contract may be offset by Club against any worker's compensation award made to Player at any time because of an injury incurred in the performance of services under this contract.

8. Club may terminate this contract at any time by notifying Player and sending an NFLnet message to the Player Personnel Department of the NFL Office. The NFL waiver system will not apply to such termination. If this contract is terminated by Club and either Player or Club so requests, Player . . .

9. In the event Player is activated by Club —— its Active List at any time during the term of this contract, Player

agrees to promptly execute an NFL Player Contract with the Club covering the 19— football season, which NFL Player Contract will supersede this contract and will contain a yearly salary of $———— and such other terms and conditions as are specified in Paragraph 16 of or an attachment to this contract. Club and Player agree that if Player is activated during the term of this contract, no additional terms and conditions may be added to the NFL Player Contract at the time of execution of that contract or thereafter.

10. Players will comply with and be bound by all reasonable Club rules and regulations in effect during the term of this contract which are not inconsistent with the provisions of this contract or of any collective bargaining agreement in existence during the term of this contract. Player's attention is also called to the fact that the League functions with certain rules and procedures expressive of its operation as a joint venture among its member clubs and that these rules and practices may affect Player's relationship to the League and its member clubs independently of the provisions of this contract.

11. Player recognizes the detriment to the League and professional football that would result from impairment of public confidence in the honest and orderly conduct of NFL games or the integrity and good character of NFL players. Player therefore acknowledges his awareness that if he accepts a bribe or agrees to throw or fix an NFL game; fails to promptly report a bribe offer or an attempt to throw or fix an NFL game; bets on an NFL game; knowingly associates with gamblers or gambling activity; uses or provides other players with stimulants or other drugs for the purpose of attempting to enhance on-field performance; or is guilty of any other form of conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football, the Commissioner will have the right, but only after giving Player the opportunity for a hearing at which

he may be represented by counsel of his choice, to fine Player in a reasonable amount; to suspend Player for a period certain or indefinitely; and/or terminate this contract.

12. This contract shall be valid and binding upon Player and Club immediately upon execution. A copy of this contract together with any attachments shall be filed by the Club with the NFL Commissioner within 10 days after execution. The Commissioner will have the right to disapprove this contract on reasonable grounds, including but not limited to an attempt by the parties to abridge or impair the rights of any other club, uncertainty or incompleteness in expression of the parties' respective rights and obligations, or conflict between the terms of this contract and any collective bargaining agreement then in existence. Approval will be automatic unless, within 10 days after receipt of this contract in his office, the Commissioner notifies the parties either of disapproval or of extension of this 10-day period for purposes of investigation or clarification pending his decision. On the receipt of notice of disapproval and termination, both parties will be relieved of their respective rights and obligations under this contract.

13. Any dispute arising between Player and Club under this contract shall be resolved in accordance with the procedure called for in any collective bargaining agreement in effect at the time the event giving rise to such dispute occurs. If no collective bargaining agreement is in effect at such time, the dispute will be submitted within a reasonable time to the NFL Commissioner for final and binding arbitration by him.

14. This contract and any attachments to it set forth the entire agreement between Player and Club and cannot be modified or supplemented orally.

15. This contract is made under and shall be governed by the laws of the State of ————————.

16. The other terms and conditions of the NFL Player Contract(s) executed upon Player's activation shall be as follows:

_____

_____

_____

_____

This contract is executed this —— day of ————, 19—.

_____ _____

(Player) (Club)

_____ _____

(Address) (BY)

_____

_____

(Telephone Number)

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**ANSWER**

The National Football League ("NFL") and its twenty-eight member clubs respond to the First Amended Class-Action Complaint as follows:

FIRST DEFENSE

The First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The matters complained of herein are not subject to the antitrust laws by reason of the non-statutory labor exemption to the antitrust laws.

THIRD DEFENSE

1. Answering paragraph 1 of the First Amended Complaint, defendants state that the paragraph's first sentence merely purports to characterize the basis for plaintiffs' asserted claims; it does not require a response. Defendants admit that plaintiffs are or at one time were professional football players. Defendants admit that they are the member clubs of the NFL and the League itself. Defendants admit that the NFL is now the only major professional football league operating in the United States. To the extent not specifically admitted herein, defendants deny the allegations of paragraph 1 of the First Amended Complaint.

2. Answering paragraph 2 of the First Amended Complaint, defendants state that in March 1989, defendants amended sections of the NFL Constitution and By-Laws

to introduce a six-man Developmental Squad for each club. Defendants deny the remaining allegations of paragraph 2 of the First Amended Complaint.

3. Defendants deny the allegations of paragraph 3 of the First Amended Complaint.

4. Answering paragraph 4 of the First Amended Complaint, defendants deny that this Court has subject matter jurisdiction over plaintiffs' claims for injunctive relief. *See* 29 U.S.C. §§ 101-115. Defendants admit that this Court has subject matter jurisdiction over the other claims asserted in the First Amended Complaint.

5. Defendants admit that venue is proper in this Judicial District. Defendants admit the allegations of the second, fourth and fifth sentences of paragraph 5 of the First Amended Complaint. Defendants deny the allegations of the third and last sentences of paragraph 5 of the First Amended Complaint.

6. Answering paragraph 6 of the First Amended Complaint, defendants admit that during all or part of the 1989 professional football season plaintiffs were players on the Developmental Squad of one or more NFL clubs. Defendants admit the allegations of the last sentence of paragraph 6 of the First Amended Complaint, except with regard to plaintiffs' current addresses, as to which defendants lack information sufficient to form a belief. Defendants deny the remaining allegations of paragraph 6 of the First Amended Complaint.

7. Paragraph 7 of the First Amended Complaint contains assertions that do not require admission or denial. To the extent that such a response is required, defendants deny the allegations of paragraph 7 of the First Amended Complaint.

8. Defendants deny that Green Bay Packers, Inc. operates a professional football team for profit. Defendants admit the remaining allegations of paragraph 8 of the First Amended Complaint.

9. Defendants admit the allegations of paragraph 9 of the First Amended Complaint.

10. Answering paragraph 10 of the First Amended Complaint, defendants admit that they are engaged in interstate commerce. Defendants admit that, within the context of their League joint venture and pursuant to lawfully developed and implemented employment principles, they compete in the market for the services of professional football players. Defendants deny the remaining allegations of paragraph 10 of the First Amended Complaint.

11. Defendants admit the allegations in the first sentence of paragraph 11 of the First Amended Complaint. Defendants deny the allegations of the second sentence of paragraph 11 of the First Amended Complaint.

12. Defendants admit the allegations of the first sentence of paragraph 12 of the First Amended Complaint. Defendants admit that the Commissioner of the National Football League is responsible for enforcing the NFL Constitution and By-Laws. Defendants deny the remaining allegations of paragraph 12 of the First Amended Complaint.

13. Defendants admit that on March 22, 1989, the member clubs of the NFL adopted an amendment to the NFL Constitution: 1989 Resolution G-2. Defendants admit that Exhibit A to the First Amended Complaint appears to be a copy of 1989 Resolution G-2 and that the second sentence of paragraph 13 of the First Amended Complaint accurately quotes from Resolution G-2. Defendants admit that at or about the time 1989 Resolution G-2 was passed, recommendations of the combined Long Range Planning/Finance Committee were reviewed. Defendants deny the remaining allegations of paragraph 13 of the First Amended Complaint.

14. Answering paragraph 14 of the First Amended Complaint, defendants admit that on or about June 30, 1989, the NFL prepared a draft of a form contract for

possible use in connection with various clubs' Developmental Squads. Defendants admit that Exhibit B appears to be a copy of that draft, and state that the terms of the draft speak for themselves. Defendants deny the remaining allegations of paragraph 14 of the First Amended Complaint.

15. Defendants deny the allegations of paragraph 15 of the First Amended Complaint.

16. Defendants deny the allegations of paragraph 16 of the First Amended Complaint.

17. Defendants admit the allegations of the second sentence of paragraph 17 of the First Amended Complaint. Defendants deny the allegations of the first and third sentences of paragraph 17 of the First Amended Complaint.

18. Defendants deny the allegations of paragraph 18 of the First Amended Complaint.

19. Defendants admit that no formal collective bargaining agreement addresses with specificity Developmental Squads. Defendants deny the remaining allegations of paragraph 19 of the First Amended Complaint.

20. Defendants admit that during the 1989 season, NFL clubs executed over 200 contacts with Developmental Squad players. Defendants deny the allegations of the second sentence of paragraph 20 of the First Complaint.

21. Defendants admit that plaintiffs purport to file their First Amended Complaint as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Defendants deny the remaining allegations of paragraph 21 of the First Amended Complaint.

22. Defendants deny the allegations of paragraph 22 of the First Amended Complaint.

23. Defendants deny the allegations of paragraph 23 of the First Amended Complaint.

24. Defendants deny the allegations of paragraph 24 of the First Amended Complaint.

25. Defendants deny the allegations of paragraph 25 of the First Amended Complaint.

26. Defendants deny the allegations of paragraph 26 of the First Amended Complaint.

27. Defendants deny the allegations of paragraph 27 of the First Amended Complaint.

* * *

Defendants deny that plaintiffs are entitled to any of the relief sought in their First Amended Complaint. Defendants respectfully request that this action be dismissed; that defendants be awarded judgment in their favor; that defendants be awarded their litigation costs, expenses and attorneys' fees; and that the Court grant such other relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ Gregg H. Levy
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Attorneys for Defendants
National Football League
and Its Twenty-Eight
Member Clubs

Dated: June 11, 1990

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**MOTION TO STRIKE DEFENDANTS' NON-STATUTORY LABOR EXEMPTION DEFENSE, OR FOR PARTIAL SUMMARY JUDGMENT**

COME NOW, Antony Brown, *et al.*, Plaintiffs herein, and move this Court, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, to strike as legally insufficient Defendants' Second Defense asserting that "[t]he matters complained of herein are not subject to the antitrust laws by reason of the non-statutory labor exemption to the antitrust laws." (Answer, p. 1). Alternatively, Plaintiffs seek entry of partial summary judgment pursuant to Rule 56(d) in their favor on this asserted defense. In support of this motion, Plaintiffs show as follows:

1. In their First Amended Complaint, Plaintiffs alleged that the concept of a Developmental Squad and the fixed-price Defendants agreed among themselves to pay to Developmental Squad players had not been contained in any labor agreement of any kind:

> Neither the concept of a Developmental Squad, nor the Developmental Squad Contract, nor the fixed $1,000 price the Clubs agreed among themselves to pay to players who signed such contracts was ever contained in any collective bargaining agreement or any labor agreement of any kind.

(Amended Complaint, ¶ 19).

In their Answer to the foregoing, Defendants admitted as follows:

> Defendants admit that no formal collective bargaining agreement addresses with specificity Developmental Squads.

(Answer, ¶ 19)

2. Plaintiffs thereafter served the following Interrogatory on Defendants and received the following answer:

> With respect to your answer to Paragraph 19 of the Complaint which asserts that "Defendants admit that no formal collective bargaining agreement addresses with specificity Developmental Squads," state in detail:
>
> (a) Whether any informal bargaining agreement (letter agreement, initialled document or telegram, FAX, or any document of any kind) exists which refers to or reflects the consent of any bargaining representative for NFL players to the establishment of Developmental Squads in 1989, or to the payment of $1,000 per week to players on such squads, or in signing 1989 Developmental Squad Players.
>
> *ANSWER*:
>
> None.

(Defendants' Answers to Plaintiffs' Second Set of Interrogatories, No. 2)

3. The parties have also produced for the opposing parties numerous documents which indisputably state and reflect that the National Football League Players Association was presented with the League's 1989 Resolution G-2 and absolutely and unequivocally refused to accept, agree or acquiesce to any system which paid all Developmental Squad players a flat, arbitrarily low salary and prohibited such players from individually negotiating their salaries. These materials are contained in a volume of documents being filed contemporaneously with this Motion (under seal) entitled "Plaintiffs' Statement of Material Facts Not in Genuine Dispute and Supporting Exhibits."

4. As set forth in the Memorandum submitted herewith, the non-statutory labor exemption defense to an antitrust claim can only be asserted where an agreement between employers and representatives of the employees exists which contains the restraint in question. Here, no agreement of any kind—formal, informal, or otherwise—exists which contains the assent or consent of the employees to the price-fixing conduct complained of herein.

5. In light of these admissions and based upon the undisputed record, Defendants cannot, as a matter of law, defend their conduct under the non-statutory labor exemption to the antitrust laws.

WHEREFORE, Plaintiffs pray this Court to strike as legally insufficient the second affirmative defense of Defendants, or, alternatively, to enter partial summary judgment in favor of the Plaintiff class against Defendants on this issue.

Respectfully submitted,

/s/ Joseph A. Yablonski
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

Pursuant to Local Rule 108(h), Plaintiffs Antony Brown, *et al.*, submit the following statement of facts not in genuine dispute:

1. Plaintiffs and members of the plaintiff class are professional football players who signed Developmental Squad contracts with the member Clubs of the National Football League ("NFL") during the 1989 professional football season (First Amended Complaint, ¶ 6; Answer ¶ 6; Order dated July 3, 1990).

2. Defendants are the NFL itself and the member Clubs of the NFL, which are competitors in the market for the services of professional football players (Complaint, ¶¶ 8-10; Answer, ¶¶ 8-10).

3. On and before September 5, 1989 and at all other relevant times, the member Clubs of the NFL were represented for collective bargaining purposes by the National Football League Management Council, whose Executive Director was, at all relevant times, Jack Donlan.

4. On and before September 5, 1989 and at all other relevant times for purposes of this case, the players in the NFL were represented for purposes of collective bargaining by the National Football League Players Association ("NFLPA"). (After the relevant events in this case occurred, NFLPA renounced its bargaining rights; although

Defendants dispute NFLPA's renunciation of bargaining rights, the point is not material to this case because all conduct material to this case occurred prior to November 6, 1989, the date NFLPA renounced its collective bargaining rights). At all relevant times, the Executive Director of NFLPA was Gene Upshaw.

5. In 1982, the Management Council and the NFLPA entered into a five year collective bargaining agreement, which expired on August 31, 1987. (A copy of the 1982 Agreement is attached at Tab 1 hereto). The expired bargaining agreement provided certain minimum salaries for players, but authorized individual salary negotiations between players and NFL Clubs beyond those minimums, such amounts to be contained in an individually executed NFL Player Contract between each player and each Club. The NFL Player Contract form that was to be used by all Clubs in signings of all players is attached hereto at Tab 2.

6. Prior to the 1989 NFL Season, no player was permitted to practice with any NFL Clubs who had not signed an NFL Player Contract with that Club. (NFL Constitution and Bylaws, § 15.6) (Tab 3, p. 48).

7. The 1982 bargaining agreement contained no provisions with respect to developmental squads or any like category of players. Under the terms of the 1982 Agreement all players were assured the right to negotiate the salaries they were to receive. This right applied to active and inactive players, players on injured reserved or in any other status with their clubs (Tab 1, pp. 28, 50, 51).

8. The 1982 collective bargaining agreement expired on August 31, 1987. No successor bargaining agreement has been negotiated or executed by the NFLPA and the NFL Management Council.

9. On February 22-23, 1989, a meeting of the NFL's Combined Long Range Planning/Finance Committee ("LRPC") was held in New Orleans, Louisiana. The

Combined Committee was comprised of the following owners of NFL Clubs:

| Club | Owner/Representative |
|---|---|
| *LRPC:* | |
| Kansas City Chiefs: | Lamar Hunt |
| New York Giants: | Wellington Mara |
| San Francisco 49'ers: | Ed DeBartolo, Jr. [did not attend] |
| Minnesota Vikings: | Mike Lynn |
| Chicago Bears: | Mike McCaskey |
| San Diego Chargers: | Alex Spanos |
| *Finance:* | |
| New Orleans Saints: | Tom Benson |
| Denver Broncos: | Pat Bowlen |
| Kansas City Chiefs: | Lamar Hunt. |

The Committee adopted 1989 Resolution G-2 which provided, in relevant part, as follows:

> 3. After 4 p.m., NYT, on Tuesday, September 5, clubs may establish a Developmental Squad of up to six players by signing free agents to special services contracts of no more than $———— per week. Such contracts *will* also include a negotiated salary that the player *will* receive if the club subsequently decides to add the player to its Active List and signs him to an NFL Player Contract. The following will apply to the Developmental Squad:
>
> a. Only players whose experience is designated as "R" (rookie) or "1" first-year player) will be eligible for the Developmental Squad. (A "Rookie" is defined as a player who has not previously been under contract to a professional football team. Players who have been active in another professional football league or whose NFL experience is limited to training camp or fewer than three games on an

Active List during during the regular season or postseason are "first-year players").

b. If a club signs a player on its Developmental Squad to its Active List, it must either use one of its five free activations or request procedural recall waivers. NFL Player Contracts executed with players who are subject to procedural recall waivers are subject to customary restrictions (no guarantees, no performance bonuses, etc.).

c. No player may be moved directly from a club's Active List to its Developmental Squad. Such players must first be waived and terminated, then signed to a club's Developmental Squad.

d. Clubs may not replace any injured Developmental Squad player until the club terminates him. Even if unable to practice, injured Developmental Squad players will continue to count within the six-player limit.

e. Clubs are permitted to terminate a Developmental Squad player at any time by notification to the League Office, and the club may sign another player to its Developmental Squad. The League's waiver system will not apply to such termination.

(Tab 4).

10. In recommending the G-2 Resolution for consideration by all the NFL Owners, the Committee described the "effect" and "reason" for the Resolution as follows:

*Effect*:

*Establish a new system* of player-personnel procedures involving squad size and Reserve/ Injured, *and introduces a six-man Developmental Squad.*

*Reason*:

> To promote competitive equality under *fiscally responsible circumstances* while maintaining many elements of the personnel system currently in place.

(Tab 4) (Emphasis added).

11. On March 22, 1989, at an Executive Season of NFL Owners Meeting in Palm Desert, California, the Owners considered 1989 Resolution G-2. Minutes of the meeting reflect no discussions on the Resolution, except that the Motion to adopt was made by Philadelphia, seconded by Atlanta, and passed by a vote of 22-5-1 (Dallas, Los Angeles Raiders, New York Jets, Pittsburgh and Washington voting "no"; Miami passed.) (Tab 5).

12. On April 7, 1989, NFL Management Council Executive Director Jack Donlan wrote to Gene Upshaw, Executive Director of NFLPA enclosing a copy of the G-2 Resolution, stating that "The Management Council desires to negotiate with your union on the terms and conditions applicable to developmental squad players." (Tab 6).

13. On April 26, 1989, NFLPA General Counsel Richard A. Berthelsen had a telephone conversation with Management-Council General James Conway concerning the Developmental Squad. (No agreement of any kind was reached during that discussion. Berthelsen's handwritten notes and Conway's typewritten letter concerning their discussion which confirms this fact are attached at Tab 7.)

14. On May 17, 1989, members of the Management Council Executive Committee, which included the Owners of the NFL's Tampa Bay, Phoenix, Cincinnati, New York Giants, Miami and Pittsburgh teams met and agreed among themselves that the salary to be paid to Developmental Squad players would be $1,000 per week. (Tab 8).

15. On May 18, 1989, Donlan again wrote to Upshaw requesting bargaining over the Developmental Squad and specific changes in the expired 1982 bargaining agreement, including the following:

> "2. Article XXII, *Salaries,* shall not apply. In lieu thereof, establish special services contract providing for salaries of $1,000 per week, prorated on a daily basis.
>
> 3. Article XXVIII, *Post-Season Pay,* shall not apply."

(Tab 9).

16. On May 30, 1989, Uphaw replied to Donlan's letter of May 18th, stating in part:

> The NFLPA is willing to agree that players can be listed on a developmental squad of an NFL club if they have all of the benefits and protections which players on the Active List have. *This, of course, would include the right to negotiate their own salaries.*
>
> Article XIX of the 1982 CBA so provided with regard to players on the Inactive List, and that concept seems to apply to developmental players as well.

(Tab 10).[1]

17. Donlan relayed Upshaw's letter to the Members of the Management Council Executive Committee (Tab 11).

---

[1] Article XIX in the 1982 Collective Bargaining Agreement ("CBA") to which Upshaw referred, stated:

> Section 3. Inactive List: For the 1982 regular and post season there will be an Inactive List of 4 players per club. For the 1983, 1985 or 1986 regular season, the clubs may determine to have an Inactive List limit of any number of players per club. Inactive List players shall receive the same benefits and protections as Active List players.

(Tab 1, p. 47).

18. On June 16, 1989, Donlan, James Conway, and Dennis Curran of the Management Council met with Upshaw and NFLPA attorney Tom DePaso. Donlan immediately informed his Executive Committee that no agreement had been reached with NFLPA concerning the fixed wages to be paid to Developmental Squad players:

> *Gene* indicated he fully understood the developmental squad but *could not agree to any arrangement that eliminated the right of any player to negotiate his individual salary. Upshaw said that* no matter what salary level we proposed to pay developmental players, whether it was our $1,000 weekly or a higher number, *the union would not "in principle" permit two classes of players to exist, one with individual bargaining rights and one without.* For implementation purposes, the issue is clearly at impasse.

(Tab 12) (Emphasis added). The handwritten notes of Upshaw and DePaso concerning this meeting also confirm this point. (Tabs 13 and 14).

19. On June 30, 1989, Donlan sent Upshaw a copy of the Developmental Squad contract the Clubs intended to use. (Tab 15). On that same date, Donlan wrote a memo to "file" relating that he and Upshaw had discussed in 1985 the hiring of 4 players by each club at $400-$500, but stating that Upshaw was now "unalterably opposed" to denying any players the right to individually negotiate their contracts. (Tab 16)[2].

---

[2] **The Defendants have produced the minutes of a 1985 meeting of the NFL Owners which reflect that no agreement was reached on this issue in 1985:**

> **Jack Donlan was introduced and said he had been contacted during the morning by Gene Upshaw of the NFLPA, who was willing to discuss non-union practice players with the Competition Committee as a result of Wednesday's action on the player limit.**
>
> **After discussion, a show of hands indicated that 15 clubs opposed pursuing the issue and the matter was dropped.**

**(Tab 17).**

20. On July 6, 1989, Upshaw sent by FAX a letter to Donlan reiterating NFLPA's opposition to "a fixed wage of $1,000 per week":

> I am writing to confirm our discussions on Friday, June 16, 1989 concerning the above subject. You told Tom DePaso and me that you wanted to sign developmental squad players to a standard form contract (yet to be developed) and pay them all a fixed wage of $1000 per week. You further stated that a player being placed in the developmental category would have to sign an NFL Player contract for a multi-year term. Once on developmental, you also stated that the player would be committed to the club for the balance of the year in question, except that the club could terminate the developmental player at any time for any reason.
>
> Tom and I rejected these conditions. *We stated that all players, including developmental, should have the right to negotiate salary terms, and that no fixed wage for any group of players is acceptable to the NFLPA.* Also, we are against restricting a player to one team if he can be an Active player with another. Moreover, it is our position that all players are entitled to full benefits, whether they are Active or in some other category.

(Tab 18) (Emphasis added).

The balance of Upshaw's letter dealt with the June 16 discusion of "free agency" for other players and arranging a future meeting concerning that issue. (Tab 18, ¶¶ 3, 4).

21. On July 7, 1989, Donlan wrote to Upshaw, taking sharp issue with Upshaw's description of the free agency discussions, but never disputing the paragraphs quoted above in paragraph 20. (Tab 19). Donlan also copied his Executive Committee concerning this exchange. (Tab 20).

22. On July 28, 1989, the NFL office sent to all NFL clubs Memo PP-82-89 which contained Questions and Answers concerning G-2 (Tab 21).

23. On August 14, 1989, Management Council General Counsel James E. Conway forwarded to Upshaw a copy of the Developmental Squad Contract (with corrected typographical errors) that the Clubs intended to use for such signings. (Tab 22). This document with its flat sum of $1,000 per week was, in fact, used by all Clubs in signing Developmental Squad players (Amended Complaint, ¶¶ 14, 20, Exhibit B; Answer, ¶¶ 14, 20).

24. On August 22, 1989, the Management Council drafted and sent Memo MC 89-17 to Club officials regarding Developmental Squad players, which stated, in part:

> "Weekly compensation to be paid to Developmental Squad Players is $1,000. Individually negotiated terms above or below $1,000 are not permitted."

(Tab 23).

25. On August 24, 1989, then NFL Commissioner Pete Rozelle issued Memo PP-92-89 to all NFL Clubs concerning compensation of Developmental Squad players and threatening to discipline any Club that provided any direct or indirect compensation to Developmental Squad players beyond $1,000 per week, including the loss of draft choices:

> 2. All signings must be on the Developmental Squad contract, which was previously provided to you. All players on the Developmental Squad will be paid a salary of $1,000 per week. *Any other direct or indirect compensation provided to Developmental Squad players is impermissible,* and *clubs violating this provision will be subject to appropriate discipline, including the loss of draft choices.*

(Tab 24).

26. On August 31, 1989, NFL Commissioner Rozelle sent another Memo (PP-96-89) to General Managers and Player Personnel Directors of all NFL Clubs stating the following timetable for Roster cuts and Developmental Squad signings:

- Clubs must make final roster cuts by 12:00 noon on 9/4/89.
- League notifies other Clubs of waivers at 4:00 p.m. 9/4/89.
- Other Clubs can claim Players by noon 9/5/89.
- Clubs can sign Players to Developmental Squad contracts after 4:00 p.m., 9/5/89.

(Tab 25).

27. On September 1, 1989, in another Memo to all NFL Clubs (PP-108-89), NFL Commissioner Rozelle remined them that the terms of NFL Player Contracts negotiated (but not executed) simultaneously with player's signing of Developmental Squad contract could be changed even if the player was terminated and later re-signed.

(Tab 26).

28. On September 4, 1989, at 3:41 p.m., four hours after all Clubs were to have informed the League office of their final roster cuts and nineteen minutes before such players could be signed by other Clubs, New England Patriots General Manager Pat Sullivan wired every other NFL Club General Manager threatening to file "tampering charges" for contacting agents of New England players to join their developmental squads. (Tab 27).

29. Also on September 4, 1989, Commissioner Rozelle again notified all NFL Clubs (Memo PP-109-89) that no benefit or compensation of any kind, other than $1,000 per week, could be paid or given to Developmental Squad players:

"Clubs are specifically reminded that they were notified in Management Council Memo MC89-17 that "weekly compensation to be paid to Developmental Squad Players is $1,000. Individually negotiated terms above or below $1,000 are not permitted."

This means that *Developmental Squad players may not receive any other compensation or benefit from the club, directly or indirectly, in any form. Housing arrangements, per diem, and any other form of compensation or benefit are impermissible.*

(Tab 28) (Emphasis supplied).

30. On September 7, 1989, Commissioner Rozelle informed the Clubs that Developmental Squad players could not dress or participate in warm-ups on game-day, but could attend and perform services on the sidelines. (Tab 29).

31. On October 12, 1989, Donlan wrote to Upshaw, stating that at a recent meeting with Detroit Lions players Upshaw had "represented that teams were violating League limitations on developmental squad salaries." (Tab 30).

32. Upshaw responded to Donlan on October 17, 1989, stating that NFLPA would not police the Clubs' "illegal salary cap for developmental squad players." (Tab 31).

33. On January 4, 1990, the NFL office sent a Memo (PP-1-90) to all Club Presidents and General Managers, which stated in part:

"Clubs participating in the playoffs are reminded, as previously indicated in Management Council Memo 89-17, dated August 22, 1989, that *Developmental Squad players are not eligible for post-season pay and that clubs are prohibited from awarding post-season compensation to such players.*"

"The *only compensation* that Developmental Squad players may receive during the playoffs *is the $1,000*

*per week* stipulated in their Developmental Squad contracts.

(Tab 32) (Emphasis added).

34. On March 11-15, 1990 (two months before this lawsuit was filed), at the NFL Owners' Annual meeting, the minutes reflect that five (5) different proposals to modify Resolution G-2 were rejected, including a proposal that "Developmental Squad players be free agents able to sign with any other club in the NFL." (Tab 33).

35. On June 11, 1990, all Defendants herein filed a single Answer (Tab 34) in which they admitted that "within the context" of the NFL "they compete in the market for the services of professional football players" (¶ 11) and that "no formal collective bargaining agreement addresses with specificity Developmental Squads" (¶ 19).

36. On July 24, 1990, ten weeks after this action was filed, the NFL publicly announced that there would be no Developmental Squads during the 1990 Season. (Tab 34).

Respectfully submitted,

/s/ Joseph A. Yablonski
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (NON-STATUTORY LABOR EXEMPTION)**

Pursuant to Fed. R. Civ. P. 56(b), defendants hereby move for summary judgment in their favor on the ground that plaintiffs' antitrust claims are barred by the non-statutory labor exemption to the antitrust laws.

The non-statutory labor exemption applies to restraints in employment terms concerning mandatory subjects of collective bargaining if management adopts those terms after they have been presented to labor and bargained in good faith to impasse. In such circumstances, and if the alleged restraint does not significantly affect the product market in which the employer competes, the employees retain the full range of their labor law rights and remedies, but they are barred from raising an antitrust challenge to the new or revised terms of employment.

Here, there is no genuine dispute as to any material issue of fact necessary to invoke the non-statutory labor exemption. In particular both sides agree that the uniform salary terms for Developmental Squad players—the alleged restraint of trade challenged by plaintiffs—were adopted by the NFL only after they had been proposed to the players' certified labor representatives and bargained in good faith to impasse. As a result, summary judgment for defendants is required as a matter of law.

The legal authority supporting this motion is addressed in the accompanying memorandum of law, which also is filed in opposition to Plaintiffs' Motion to Strike Defend-

ants' Non-Statutory Labor Exemption Defense, or for Partial Summary Judgment. The authority supporting defendants' motion includes a recent decision of the United States Court of Appeals for the Eighth Circuit that is directly on point. *Powell* v. *National Football League*, 888 F.2d 559 (8th Cir. 1989), *petition for certiorari pending*, 110 S. Ct. 2583-84 (1990).

We have also filed herewith a Statement of Material Facts Not in Dispute, a response to Plaintiffs' Statement of Material Facts Not In Genuine Dispute, and a proposed Order.

Respectfully submitted,

/s/ Gregg H. Levy
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Attorneys for Defendants
National Football League and
Its Twenty-Eight Member
Clubs

October 19, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

1. At all times relevant to this dispute, the National Football League Players Association ("NFLPA") was certified by the National Labor Relations Board as the exclusive collective bargaining representative of the NFL's professional football players. The NFLPA has engaged in collective bargaining with the National Football League Management Council, the collective bargaining representative of the NFL teams.

2. The alleged restraint of trade challenged by plaintiffs—uniform salary terms for Developmental Squad players during the 1989 season—were adopted by the NFL only after those terms had been proposed to the NFLPA and bargained in good faith to impasse.

3. The alleged restraint of trade challenged by plaintiffs principally affects only plaintiffs and defendants, and does not have a significant effect on the product market in which defendants compete.

Respectfully submitted,

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Attorneys for Defendants
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October 19, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

Pursuant to Local Rule 108(h), defendants set forth below their response to each fact that plaintiffs assert is material and not in genuine dispute. By not disputing an asserted fact, defendants do not agree that such fact, or the evidence offered in support thereof, is relevant, material or admissible evidence. Defendants reserve all of their rights and objections in such regards.

* * *

1. Not disputed.

2. As written, this sentence is vague and incomplete. Defendants do not dispute that, within the context of their League joint venture and pursuant to lawfully developed employment law principles, the member Clubs of the NFL compete for the services of professional football players.

3. Not disputed.

4. Defendants do not dispute the first and third sentences of this paragraph. Defendants agree that the facts asserted in the parenthetical sentence are not material to this case. As plaintiffs acknowledge, defendants dispute the first clause of the parenthetical sentence.

5. The first and second sentences of this paragraph are not disputed, except that some provisions of the collective bargaining agreement, by their terms, continue in effect after August 31, 1987. Defendants dispute the facts

asserted in the third and fourth sentences of this paragraphs because they do not accurately summarize the relevant provisions of the 1982 agreement.

6. Disputed. This paragraph does not accurately reflect the substance of the cited document.

7. Disputed. As written, the first sentence of this paragraph is vague, though defendants do not dispute that the 1982 bargaining agreement contained no specific reference to Developmental Squads. The second and third sentences do not accurately summarize the relevant provisions of the 1982 agreement.

8. Not disputed, except that some provisions of the 1982 collective bargaining agreement, by their terms, continue in effect after August 31, 1987.

9. The first and third sentences of this paragraph are not disputed, except for the fact that the original resolution did not include the underlining reflected in the pleading. With regard to the second sentence, the asserted composition of the committees and the characterization of their members are not accurate, as the cited documents confirm.

10. Defendants do not dispute that this paragraph (except for the underlining) accurately quotes from portions of the cited document.

11. Not disputed, except for the facts (1) that the meeting discussed was an Executive Session of the National Football League Annual Meeting and (2) that the minutes indicate that there was discussion of the Resolution.

12. Not disputed.

13. The first sentence is not disputed. With regard to the second and third sentences, defendants do not contend that an agreement was reached in those discussions. To the extent that those sentences assert any other facts, they are disputed.

14. Disputed. There is no evidence suggesting that any agreement was reached at the identified meeting; the cited documents confirm that "no vote was taken." Moreover, the attendees at the meeting are incorrectly identified, as the cited document confirms.

15. Disputed. The summary does not accurately reflect the substance of the cited document, although this paragraph does quote correctly from a portion of the document.

16. Not disputed, except for the facts (1) that the pleading includes underlining not reflected in the cited letter and (2) that the footnote does not quote correctly from the cited document.

17. Not disputed.

18. Not disputed, except that the characterization of the quoted document is not accurate and that the underlining is not part of the original document.

19. Not disputed.

20. Not disputed, except for the fact that the underlining is not part of the original document.

21. Not disputed.

22. Not disputed.

23. Not disputed.

24. Not disputed.

25. Except for the underlining, this paragraph accurately quotes from the cited memorandum. Defendants dispute the characterization of the memorandum's substance, including the phrase "threatening to discipline."

26. Disputed. This paragraph does not accurately quote from the cited document.

27. Disputed. This paragraph does not accurately summarize the cited document.

28. Disputed. This paragraph is inaccurate in several respects, as the cited document confirms.

29. Not disputed, except for the facts that this paragraph includes underlining not reflected in the original document and that Developmental Squad players did receive benefits other than their $1,000 per week salary.

30. Not disputed.

31. Disputed. This paragraph does not accurately quote from the cited document.

32. Disputed. This paragraph does not accurately quote from the cited document.

33. Not disputed, except for the fact that the pleading contains underlining not reflected in the original document.

34. Not disputed.

35. Disputed. This paragraph does not accurately quote from defendants' Answer.

36. Not disputed.

Respectfully submitted,

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Attorneys for Defendants
National Football League and
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Clubs

October 19, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

COME NOW, Plaintiffs, Antony Brown, *et al.*, on behalf of the Plaintiff-Class and pursuant to Local Rule 108, and file this response to Defendants' Statement of Material Facts Not In Genuine Dispute:

1. If the phrase "[a]t all relevant times" means prior to November 6, 1989 (See Plaintiffs' Statement, ¶ 14 and Defendants' Response acknowledging that events concerning NFLPA's status which post-date November 6, 1989 are immaterial to the issues in this case), the facts in this paragraph are correct as a general matter. With respect to the specific types of employees included in certified unit, see Certification of Representation issued by the National Labor Relations Board in Case No. 18-RC-8308 (January 22, 1971).

2. Disputed. The NFL owners "adopted" an amendment to the NFL Constitution and Bylaws approving 1989 Resolution G-2 on March 22, 1989, without prior notice or bargaining with the NFLPA. This constitutional provision became binding on the Clubs and enforceable by the Commissioner on that date. The NFL thereafter presented NFLPA with this constitutional change as a *fait accompli* and sought NFLPA's approval. Before there was any formal discussion between the Clubs and NFLPA concerning the G-2 Resolution, the Clubs determined on May 17, 1989, to fix the price they would pay for the

services of Developmental Squad players at $1,000 per week. When NFLPA refused to become a party to the Clubs' price-fixing conspiracy, the Clubs nevertheless proceeded to abide by and comply with the G-2 Resolution.

3. The facts set forth in this paragraph are immaterial to the issues before the Court. Moreover, if the facts in this paragraph are material, Plaintiffs cannot state whether they agree or dispute the facts of this paragraph, because Defendants have failed to specify "the product market in which the defendants compete."

Respectfully submitted,

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Attorneys for Plaintiff-Class

Dated: October 29, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY**

COME NOW, Antony Brown, *et al.*, on behalf of the certified class, and move this Court, pursuant to Rule 56, Fed. Rule of Civ. Pro., to enter summary judgment on liability in favor of Plaintiffs against Defendants. In support of this Motion, Plaintiffs show as follows:

1. Based upon the undisputed factual record, Defendants' agreement among themselves to fix the prices to be paid for the services of members of the Plaintiff-Class constitutes an unreasonable restraint of trade.

2. Defendants' conduct constitutes a clear violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. Plaintiffs are entitled to judgment as a matter of law.

WHEREFORE, Plaintiffs pray that judgment on liability be entered in their favor and against Defendants.

Respectfully submitted,

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Attorneys for Plaintiff-Class

Dated: December 17, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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**SUPPLEMENTAL STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

Pursuant to Local Rule 108(h), Plaintiffs Antony Brown, *et al.*, submit the following statement of facts not in genuine dispute, which supplements the Statement of Facts submitted previously by Plaintiffs in support of their Motion for Summary judgment relating to Defendants' non-statutory labor exemption defense: [1]

37. During each week of 1988 and 1989 NFL Regular and Post-Seasons, each NFL Club was permitted to carry on its Roster a maximum of 45 Active and 2 Inactive players. The computer-printouts maintained by the NFL for each Club for each week of the 1988 and 1989 Seasons reflect that for virtually every week (of both Seasons) all Clubs carried the maximum number of 47 players (45+2) on their Active/Inactive Lists (Tab 44, Exhibits A and B).

38. Only those players on a Club's Active List were permitted to dress and play during each week. (NFL Constitution and Bylaws).

---

[1] The undisputed facts set forth herein accordingly begin with paragraph 37 and the Exhibits attached hereto begin with Tab 36, which supplement, respectively, the facts previously established as undisputed in connection with Plaintiffs' earlier motion concerning the non-statutory labor exemption and the Exhibits tendered in connection therewith.

39. Inactive List players were permitted to practice with their respective Clubs. Although they did not actually play during each week, Inactive List players were paid their full NFL Player Contract salaries for each such week (Clubs' Ans. to Int. Nos. 11, 12, Set II) (Tabs 37, 40).

40. During the 1988 and 1989 NFL Regular and Post-Seasons, NFL Clubs also paid the full NFL Player Contract salaries to players on each Club's Reserve/Injured ("R/I" or "IR") List. The NFL Constitution and Bylaws provided, at all relevant times, that "Players on Reserve/Injured are compensated at the full rate of their NFL Players Contracts. . . ." (Tab 3, p. 52).

41. In 1988, the NFL Constitution and Bylaws contained the following language concerning Reserve/Injured players participating in practices and other team functions:

> PARTICIPATION WHILE ON RESERVE/INJURED. *Players on Reserve/Injured may attend team meetings and participate in practice sessions with Active List players as soon as physically able to do so.* Players on Reserve/Injured are prohibited from appearing in gams, participating in game-day warm-ups with their teams, dressing in game uniforms on game-days, or representing their teams in pre-game ceremonies. Reserve/Injured players may, however, serve their clubs on the sidelines, provided they perform a necessary function connected with the game, dress in clothing issued by the club to its game staff, and display appropriate credentials under the prevailing rules covering the bench areas.
>
> * * *
>
> 4. Throughout the entire four-week period specified in Nos. 2 and 3 above [concerning players with major pre-season injuries], *the involved player must not engaged in regular practice.* He will be limited to rehabilitation workouts apart from

Active List players. *The club would be required to notify the League office* by TWX *as soon as the player resumes regular practice*, in which case the four-week "clock" would stop, and the club would have no right to place the player onto Reserve/Injured with a major injury. Of course, if a subsequent injury occurred, the procedures could be repeated.

5. *Despite the prohibition of practice* during the four-week period under No. 4 above, *if*, in the preseason or regular season, *a player goes onto Reserve/Injured under normal circumstances and his injury is documented* as four weeks or more from the date of going onto Reserve, then *such player may resume practice sessions with Active List players as soon as physically able to do so*; provided, however, that the Commissioner may, if he deems the content and date of the resumed practice to be inconsistent with the purported nature and severity of the player's injury, take such factors into account in his investigation of the case.

(Tab 3, pp. 52, 56). (Emphasis supplied).

42. During the 1988 NFL Season, the Clubs had an average of 11.36 Players on their Reserve/Injured Lists for each week of the Regular and Post-Season. (Tab 44, Exhibit C). During the 1988 NFL Season, the Clubs paid a total of $43,330,080.87 to players on Reserve/Injured status (Tab 44, ¶ 5, Exhibit D).

43. The following members of the Plaintiff Class were on Reserve/Injured status during the 1988 NFL Season and were paid by their respective Clubs the weekly salaries set forth below:

| Class Members' Name | 1988 Club | 1988 Weekly Salary |
|---|---|---|
| a. Birden, J.J. | Clev. Browns | ($ 3,750) |
| b. Brown, Henry | Buffalo Bills | ($ 4,250) |
| c. Brown, Tony | N.Y. Giants | ($ 4,688) |
| d. Carter, Jon | N.Y. Giants | ($ 4,688) |
| e. Crudup, Derrick | L.A. Raiders | ($ 4,375) |
| f. Cullity, Dave | Clev. Browns | ($ 5,312) |
| g. Derby, Glenn | N.O. Saints | ($ 2,500) |
| h. Ford, Bernard | Buffalo Bills | ($ 6,250) |
| i. Henry, Thomas | L.A. Rams | ($ 2,812) |
| j. Henry, Charles | L.A. Raiders | ($ 2,500) |
| k. Murray, Dan | Buffalo Bills | ($ 3,125) |
| l. Patchan, Matt | Phil. Eagles | ($ 6,875) |
| m. Roach, Kirk | Buffalo Bills | ($ 3,125) |
| n. Sterling, Rod | Phil. Eagles | ($ 4,187) |
| o. Stewart, Curtis | Chicago Bears | ($ 2,187) |
| p. Usher, Daryl | N.E. Patriots | ($ 2,812) |
| q. VanDruten, R. | K.C. Chiefs | ($ 2,812) |
| r. Ware, Reggie | L.A. Raiders | ($ 2,375) |
| s. Whitaker, D. | N.Y. Giants | ($ 4,250) |
| t. Williams, R. | S.D. Chargers | ($ 2,187) |

(Defs.' Answers to Int. 11, Set II).

44. In recommending adoption of the G-2 Resolution the NFL's Combined Finance/Long Range Planning Committee acknowledged a "fiscal" purpose:

> "Reason [for adoption]: To promote competitive equality *under fiscally responsible circumstances* while maintaining many elements of the personnel system currently in place."

(Tab 4, p. 5).

45. As adopted as an amendment to the NFL Constitution, the G-2 Resolution provided that certain players placed on R/I status could not practice and that others could, but would count against each Club's limit of six Developmental Squad players:

> a. *A player placed on Reserve/Injured prior to or concurrent with the final roster reduction* may not return to his club's Active List in that season

under any circumstances. Clubs may request waivers on such players at any time or retain them on their Reserve/Injured List for the rest of the season. Such players *may not practice.*

b. Players placed on Reserve/Injured after the final roster reduction will be eligible to return to the club's Active List after a minimum of six games, either by free activation or by procedural recall waivers. Clubs will be permitted five free activations during the regular season.

For such players, clubs will have two options: option one is to *begin practice after a minimum of four weeks, and option two is to begin practice after a minimum of six weeks on Reserve/Injured.*

*Option One*: If a player *begins practice* after a minimum of four weeks, the club is permitted to practice the player for a maximum of two weeks, after which it must either return him to the Active List or request waivers, unless he has been injured; if injured, the player may be retained on Reserve/Injured, but he will not be eligible to practice or to be activated thereafter.

*Option Two*: *If a player begins practice after a minimum of six weeks on Reserve/Injured, the player is eligible to practice for the rest of the season, but he counts against the club's Developmental Squad limit of six papers.*

(Tab 5, p. 2). (Emphasis supplied).

46. Representatives of the NFL Clubs acknowledged in discussions with NFLPA that a principal purpose of the G-2 Resolution was to reduce the Clubs' player-costs. On April 26, 1989, James Conway, General Counsel to the NFL Management Council told NFLPA General Counsel Richard Berthelsen that the purpose of G-2 was to reduce costs, as Berthelsen's notes reflect:

[Berthelsen]: "Express purpose?

[Conway]: A. This part & parcel of the discussion—an attempt to reduce cost in an aura [sic] of flat revenues. . . .

* * *

[Berthelsen]: Is this a way to replace P[layer]s who were previously on I/R?

[Conway]: A. Would be more comfortable in face-to-face—not going in direction of increasing costs=answer should be obvious. . . ."

(Tab 7, pp. 2-3).

On June 16, 1989, Conway again described the reasons for the Developmental Squad in a meeting with Gene Upshaw and NFLPA attorney Tom DePaso:

"League-wide salary costs of 22%. Clubs would like to reduce it."

Jack Donlan, Executive Director of the Management Council also acknowledged that by establishing Developmental Squads, the Clubs wanted to "control costs":

"These are practice players. . . We want to control costs. . . .

Donlan asserted that there were "about 12½ people on IR each year" which represented "about 25% of player costs. . . ."

(Tab 14).

47. The effect of the G-2 Resolution was to reduce markedly the number of players carried by the Clubs on Reserved/Injured status who were compensated by the Clubs at the "full rate of their NFL Player [individually negotiated] Contracts." The League's own internal analysis showed that 67 drafted players in 1989 had signed Developmental Squad contracts, a number precisely equal

to the number of drafted players in 1988 (67) who had been placed on Reserved/Injured status as of the first regular season game of each Season (Tab 44, P-12).

48. The number of Players on Reserved/Injured status, according to the League's computer printouts, dropped from 11.26 players per Club, per week in 1988 to 5.87 players per Club, per week in 1989. This fifty percent across-the-board reduction in Reserve/Injured players (who, on average, were paid over $12,000 per week during 1989) was almost fully offset by the 5.16 Developmental Squad players that each Club on average had on its payroll at $1,000 per week during the 1989 Season (Tab 44, Exhibit C).

49. A "Q&A" sheet prepared by the League confirmed that R/I players cleared to practice would be counted against the maximum number of six Developmental Squad players that each Club could carry.

> *Q. Regarding players on Reserve/Injured who are counting against my Development Squad limit of six, am I restricted to only those players who experience is "R" or "I?"*
>
> *A. No. The restriction in question applies to players who are free agents and signed to your Developmental Squad. Those players on your Reserve/Injured List who count against your Developmental Squad limit may include players who have two years or more of experience.*

(Tab 21, p. 7) (Emphasis is original).

50. The Daily Transaction Telexes sent by the Clubs to the NFL during the 1989 Season, attached hereto at Tab 43, confirm the inter-relationship and interchangeability between players on Reserve/Injured status and Developmental Squad players.

51. During the 1989 Season, the NFL issued a Player-Personnel directive (PP-112-89) to all NFL Clubs con-

cerning the game day activities of Developmental Squad players and other players not on a Club's Active List, which memo directed that all such players be treated similarly:

> Clubs are reminded that, according to League policy, players on Reserve/Injured, the Inactive List, and the Developmental Squad are prohibited from participating in game-day warmups with their teams, dressing in game uniforms on game-days, or representing their teams in pregame ceremonies. They may, however, serve their clubs on the sidelines *provided they perform a necessary function connected with the game, dress in clothing issued by the Club to its game staff, and display appropriate bench area credentials.*

(Tab 29) (Emphasis is original).

52. When Defendants were requested by way of interrogatories to show in detail the existence of price competition among the Clubs in 1989 for the services of the 235 class members, as Developmental Squad players, the Clubs admitted that they were not aware of any competition whatsoever for the services of 229 class members. As to six identified players, in which Defendants stated more than one Club had an "interest," Defendants offered no evidence of competing offers or other evidence of actual competition among themselves for these players' services. (Tab 46).

53. When Defendants were asked by Plaintiffs by way of interrogatories to show an economic pro-competitive justification for their agreement among themselves to pay a flat sum to all Developmental Squad players in 1989 and to produce documents showing a pro-competitive effect, they declined to answer the interrogatory or to produce any documents. (Tab 47).

54. In contrast to the total absence of evidence price competition for services of members of the plaintiff class

as Developmental Squad players, over 200 of the 235 class members were offered and signed NFL Player Contracts for the 1990 NFL Season, according to computerized "Player Profiles" produced in discovery by the NFL. (Tab 48, ¶ 2). These "Player Profiles" show that members of the class received more than $3.3 million in 1990 signing bonuses alone, and that 139 class members entered into NFL Player Contracts providing potential compensation of $100,000 or more for the 1990 Season. *Id.* Twelve (12) class members signed 1990 contracts providing for signing bonuses and base salaries of more than $250,000; seven (7) class members signed agreements providing for payments of between $225,000 and $250,000; while another nine (9) reached agreements providing for total payments between $200,000 and $225,000. Thirty-five (35) players signed agreements containing base salary and bonuses of between $150,000 and $200,000. (Tab 48, ¶ 3).

55. Not all of the class members who signed 1990 NFL Player Contracts made the Rosters of NFL Clubs. As of October 1, 1990, the date of the "Player Profiles," fifty-four (54) class members were listed by the NFL as Active, and twenty-six (26) were listed on Reserve/Injured or Reserve/Physically Unable to Perform. Others have been signed to 1990 Practice Player Contracts. Excluding bonuses, the average base salary currently being received by class members under NFL Player Contracts exceeds $115,000 for the 1990 Season. (Tab 48, ¶ 4).

Respectfully submitted,

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UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**NOTICE OF FILING**

To: Gregg H. Levy
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Washington, D.C. 20044

PLEASE TAKE NOTICE, that Plaintiffs have filed with the Clerk the attached Amended Declaration of Maxwell Clifford Cohen (with Amended Exhibits), which supersedes and replaces the Original Declaration of Maxwell Clifford Cohen, which appears at Tab 44 of Plaintiffs' Supplemental Statement of Material Facts Not In Genuine Dispute and Supplemental Exhibits (Volume II), filed on December 17, 1990.

Respectfully submitted,

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Attorneys for Plaintiff Class

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**AMENDED DECLARATION OF MAXWELL CLIFFORD COHEN**

Under penalty of perjury, Maxwell Clifford Cohen declares and states as follows:

1. I hold a B.A. from the Colorado College and a J.D. from the George Mason University School of Law (May, 1990). I presently reside at 2104 N. Brandywine Street, Arlington, Virginia 22207.

2. I signed a Declaration which was filed with the Court on December 17, 1990, to which were appended a number of Exhibits. Prior to my deposition (which was taken on January 4, 1991), and since then, I have become aware that in reviewing thousands of numbers and in making various arithmetical calculations that some transpositions and other minor inaccuracies were contained in the Exhibits and in my original Declaration. I have since rechecked my figures and file herewith this amended Declaration and amended Exhibits. Because most of the data were calculated as averages per Club, per week, the minor errors I have found have virtually no impact on the final figures contained in the Exhibits.

3. In October and November of 1990 and again in January, 1991, under the direction of Joseph A. Yablonski, I reviewed and analyzed several thousand pages of computer printouts produced by the National Football League in this litigation containing the rosters of the member Clubs of the National Football League for each week of the 1988 and 1989 Regular and Post-Seasons.

I recorded the number of players listed on each Club's Active, Inactive and Reserve/Injured lists for each week in Exhibits A and B attached hereto.

4. At the direction of Mr. Yablonski, I then determined the average number of players carried by each Club on its Reserve/Injured lists for the 1988 and 1989 Seasons, which covers the periods before and after the NFL implemented its G-2 Constitutional amendment providing for the establishment of Developmental Squads. The data, which is contained in Exhibit C attached hereto, reflect that in 1988 (when there were no Developmental Squads) the Clubs carried an average of 11.26 players on their Reserve/Injured Lists during each week of the Season. In 1989, the average number of players on Reserve/Injured Lists for each week during the Season dropped to 5.89, but this number was augmented by the number of Developmental Squad players each Club carried, which averaged 5.16 players per week. The total number of players in these two categories was 11.05 players per week, per team in 1989.

5. Since I prepared my original Declaration in this case, I have been shown a document by the Defendants which counts the number of Players on Reserve/Injured Status for the years 1977 through 1989, which appears at P-16 of Tab 45 of Volume II of Exhibits. Although the NFL's chart covers only the Regular Season, (while my calculations on Exhibits A, B and C include Reserve/Injured player-weeks during both the Regular and Post-Season), I have determined that the NFL's figures are within hundredths of a decimal point on my totals. Thus, when the 1988 and 1989 columns on P-16 (Tab 45) are added they yield 5,073 and 2,647, respectively. Dividing these totals by 28 Clubs and 16 weeks yields an average number of Reserve/Injured players per Club, per week of 11.32 in 1988 and 5.91 in 1989, which is within 6/100's of my figure of 11.26 R/I players, per Club, per week,

during the 1988 Season and 2/100's of my figure of 5.89 for 1989 Season.

6. I was also requested to review and analyze over four hundred pages of interrogatory answers filed by the NFL Clubs containing the weekly salaries paid during each week of the 1988 and 1989 Seasons to players on Injured Reserve status and the Amended Answers to these Interrogatories which were served on December 12, 1990. I totalled the amounts paid by each Club to such players and then divided that amount by the total number of weeks that Injured Reserve players had been paid by each Club, as reflected in the Clubs' Amended Interrogatory Answers. These figures are contained on Exhibit D attached hereto and reflect that the average weekly salary paid by the Clubs to Reserve/Injured players was over $8,000.00 during the 1988 Season and the average was over $13,000.00 during the 1989 Season.

7. Exhibit D also contains the total amounts paid by all Clubs to Reserve/Injured players in 1988. The data contained in this Exhibit is derived from the Clubs' Amended Answers to Interrogatory 11, Set II. As set forth in Column 2 of Exhibit D, the total amount paid by the Clubs to Reserve/Injured players in 1988 was $43,324,410.99.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Maxwell Clifford Cohen
MAXWELL CLIFFORD COHEN

EXHIBIT C

NATIONAL FOOTBALL LEAGUE

| Club | Regular and Post-Season 1988 | | | Regular and Post-Season 1989 | | | | |
|---|---|---|---|---|---|---|---|---|
| | Weeks of Play | Total R/I Player Weeks | Average No. of R/I Players Per Week | Weeks of Play | Total R/I Player Weeks | Average No. of R/I Players Per Week | Total Dev. Squad Player Weeks | Average No. of Dev. Squad Players Per Week |
| Atlanta Falcons | 16 | 257 | 16.06 | 16 | 70 | 4.38 | 81 | 5.06 |
| Buffalo Bills | 18 | 273 | 15.17 | 17 | 152 | 8.94 | 99 | 5.82 |
| Chicago Bears | 18 | 175 | 9.72 | 16 | 62 | 3.88 | 79 | 4.94 |
| Cincinnati Bengals | 19 | 187 | 9.84 | 16 | 82 | 5.13 | 65 | 4.06 |
| Cleveland Browns | 17 | 172 | 10.12 | 18 | 104 | 5.78 | 107 | 5.94 |
| Dallas Cowboys | 16 | 165 | 10.56 | 16 | 134 | 8.38 | 87 | 5.44 |
| Denver Broncos | 16 | 172 | 10.75 | 19 | 88 | 4.63 | 112 | 5.89 |
| Detroit Lions | 16 | 177 | 11.06 | 16 | 97 | 6.06 | 60 | 3.75 |
| Green Bay Packers | 16 | 236 | 14.75 | 16 | 70 | 4.38 | 89 | 5.56 |
| Houston Oilers | 18 | 194 | 10.78 | 17 | 23 | 1.35 | 96 | 5.65 |
| Indianapolis Colts | 16 | 68 | 4.25 | 16 | 55 | 3.44 | 83 | 5.19 |
| Kansas City Chiefs | 16 | 169 | 10.56 | 16 | 113 | 7.06 | 77 | 4.81 |
| Los Angeles Raiders | 16 | 221 | 13.81 | 16 | 108 | 6.75 | 72 | 4.50 |

Source: National Football League Roster Printouts for each club during each week of the 1988 and 1989 seasons.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Los Angeles Rams | 17 | 165 | 9.71 | 19 | 83 | 4.37 | 106 | 5.58 |
| Miami Dolphins | 16 | 126 | 7.88 | 16 | 171 | 10.69 | 68 | 4.25 |
| Minnesota Vikings | 18 | 98 | 5.44 | 17 | 77 | 4.53 | 93 | 5.47 |
| New England Patriots | 16 | 287 | 17.94 | 16 | 176 | 11.00 | 82 | 5.13 |
| New Orleans Saints | 16 | 148 | 9.25 | 16 | 27 | 1.69 | 89 | 5.56 |
| New York Giants | 16 | 254 | 15.88 | 17 | 86 | 5.06 | 92 | 5.41 |
| New York Jets | 16 | 237 | 14.81 | 16 | 155 | 9.69 | 83 | 5.19 |
| Philadelphia Eagles | 17 | 187 | 11.00 | 17 | 103 | 6.06 | 96 | 5.65 |
| Phoenix Cardinals | 16 | 136 | 8.50 | 16 | 143 | 8.94 | 73 | 4.56 |
| Pittsburgh Steelers | 16 | 91 | 5.69 | 18 | 41 | 2.28 | 99 | 5.50 |
| San Diego Chargers | 16 | 255 | 15.94 | 16 | 65 | 4.06 | 85 | 5.31 |
| San Francisco 49ers | 19 | 224 | 11.79 | 19 | 126 | 6.63 | 95 | 5.00 |
| Seattle Seahawks | 17 | 125 | 7.35 | 16 | 97 | 6.06 | 69 | 4.31 |
| Tampa Bay Buccaneers | 16 | 180 | 11.25 | 16 | 100 | 6.25 | 85 | 5.31 |
| Washington Redskins | 16 | 266 | 16.63 | 16 | 137 | 8.56 | 81 | 5.06 |
| GRAND TOTAL | 466 | 5,249 | 316.49 | 466 | 2,745 | 166.15 | 2,403 | 143.90 |
| *Averages By Club* | | 11.26 Average per week | 11.30 Wkly Avg Weighted by Club | | 5.89 Average Per Week | 5.93 Wkly Avg. Weighted by Club | 5.16 Average Per Week | 5.14 Wkly Avg. Weighted by Club |

EXHIBIT D

NATIONAL FOOTBALL LEAGUE

| | 1988 Regular and Post-Season | | | 1989 Regular and Post-Season | | |
|---|---|---|---|---|---|---|
| Club | Total Paid to Reserve/Injured (R/I) Players * | R/I Player Weeks * | Total Average $ Paid R/I Players Per Week | Total Paid to R/I Players | R/I Player Weeks * | Total Average $ Paid R/I Players Per Week |
| Atlanta Falcons | 1,646,875.00 | 259 | 6,358.59 | 780,936.50 | 74 | 10,553.20 |
| Buffalo Bills | 1,271,778.00 | 262 | 4,854.11 | 1,226,600.00 | 159 | 7,714.47 |
| Chicago Bears | 1,472,760.00 | 165 | 8,925.82 | 985,697.00 | 60 | 16,428.28 |
| Cincinnati Bengals | 1,366,875.06 | 186 | 7,348.79 | 626,281.25 | 66 | 9,489.11 |
| Cleveland Browns | 1,932,125.00 | 172 | 11,233.28 | 1,080,427.50 | 104 | 10,388.73 |
| Dallas Cowboys | 2,264,192.00 | 174 | 13,012.60 | 1,164,643.75 | 130 | 8,958.80 |
| Denver Broncos | 1,760,187.50 | 189 | 9,313.16 | 1,550,312.50 | 88 | 17,617.19 |
| Detroit Lions | 1,981,563.00 | 194 | 10,214.24 | 1,168,812.50 | 91 | 12,844.09 |
| Green Bay Packers | 1,513,781.25 | 228 | 6,639.39 | 1,017,933.19 | 70 | 14,541.90 |
| Houston Oilers | 1,144,593.75 | 194 | 5,899.97 | 150,750.00 | 24 | 6,281.25 |
| Indianap. Colts | 420,499.00 | 68 | 6,183.81 | 325,053.00 | 51 | 6,373.59 |
| Kansas City Chiefs | 1,359,124.99 | 169 | 8,042.16 | 1,510,187.50 | 113 | 13,364.49 |
| Los Angeles Raiders | 2,026,281.69 | 237 | 8,549.71 | 2,065,637.00 | 111 | 18,609.34 |
| Los Angeles Rams | 1,254,625.25 | 166 | 7,557.98 | 611,500.00 | 80 | 7,643.75 |
| Miami Dolphins | 1,203,408.00 | 125 | 9,627.26 | 1,707,316.00 | 154 | 11,086.47 |
| Minnesota Vikings | 669,000.00 | 98 | 6,826.53 | 733,748.50 | 77 | 9,529.20 |

| | | | | | | |
|---|---|---|---|---|---|---|
| New England Patriots | 2,430,811.50 | 287 | 8,469.73 | 2,553,732.68 | 179 | 14,266.66 |
| New Orleans Saints | 1,071,187.00 | 148 | 7,237.75 | 630,700.00 | 27 | 23,359.26 |
| New York Giants | 2,205,125.00 | 255 | 8,647.54 | 1,522,812.50 | 89 | 17,110.25 |
| New York Jets | 1,604,006.25 | 238 | 6,739.52 | 2,501,974.95 | 155 | 16,141.77 |
| Phila. Eagles | 1,649,750.00 | 187 | 8,822.19 | 1,536,393.40 | 103 | 14,946.44 |
| Phoenix Cardinals | 1,225,875.00 | 137 | 8,947.99 | 3,242,199.00 | 143 | 22,672.77 |
| Pittsburgh Steelers | 843,093.75 | 91 | 9,264.77 | 303,625.00 | 41 | 7,405.49 |
| San Diego Chargers | 1,891,562.50 | 258 | 7,331.64 | 800,625.00 | 66 | 12,130.68 |
| San Francisco 49'ers | 3,038,125.00 | 225 | 13,502.78 | 2,596,625.00 | 125 | 20,773.00 |
| Seattle Seahawks | 1,020,861.75 | 119 | 8,578.67 | 1,485,000.00 | 95 | 15,631.58 |
| Tampa Bay Buccaneers | 1,202,437.50 | 181 | 6,643.30 | 653,187.50 | 100 | 6,531.88 |
| Washington Redskins | 1,853,906.25 | 272 | 6,815.83 | 1,985,875.00 | 155 | 12,812.10 |
| Grand Totals | 43,324,410.99 | 5284 | 8,199.17 | 36,518,586.22 | 2730 | 13,376.77 |

* Clubs' Amended Answers to Interrogatory No. 11 for 1988 and No. 12 for 1989 (Tabs 37, 40).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**DECLARATION OF JOHN M. DONLAN**

1. I am the former Executive Director of the National Football League Management Council ("Management Council"), and held that position from July 1980 to March 1991. The Management Council is the collective bargaining representative of the NFL clubs. I make this declaration on my own personal knowledge and am competent to testify to the matters stated herein.

2. On March 22, 1989, the NFL adopted Resolution G-2—a new package of roster rules designed to remedy competitive abuses existing under the prior roster system. Resolution G-2 contained revisions to the injured reserve rules, established a maximum roster limit of 80 players, and created Developmental Squads—units of up to six rookies or first-year players who were allowed to practice with their clubs but not play in actual games.

3. During the mid-to-late 1980's, I received and was aware of numerous complaints from clubs about competitive abuses of the injured reserve rules. In particular, clubs expressed concern about a practice known as "stashing"—*i.e.*, placing promising young players on injured reserve in order to develop them for use in an active capacity in later years. Not only did this practice prevent promising players from moving to teams that had an immediate use for their services, but it also allowed certain clubs to develop large, high-quality practice squads. Because of these effects, stashing was viewed as leading to competitive disparities between teams on the playing field. Resolution G-2 sought to remedy this situation by restricting the conditions under which IR players would

be allowed to practice, thereby reducing the likelihood that teams would choose to stash promising young players and eliminating the impact of most IR players on the quality of a club's practice sessions.

4. In order to meet the demand of NFL coaches for practice players that would not count against their active squad limits, and in order to attract the votes necessary to pass the new injured reserve rules, Resolution G-2 also contained provisions creating Developmental Squads. These squads were designed to be units of six rookie or first-year practice players that would not be allowed to play in actual games. Importantly, Resolution G-2 provided that Developmental Squad players would be paid a uniform salary, thereby helping to ensure that all clubs would retain Developmental Squad players of comparable skill. Resolution G-2 also required that only free agents could sign Developmental Squad contracts; thus, all such players had an opportunity to shop their services to all 28 NFL clubs before they could be signed to a Developmental Squad contract.

5. Two weeks after Resolution G-2 was passed, I initiated negotiations with the National Football League Players Association over implementation of the terms and conditions of employment for Developmental Squad players. Thus, on April 7, 1989, I sent a letter to the Executive Director of the NFLPA, Eugene Upshaw, requesting a meeting to discuss Developmental Squad issues. *See* Pls. Vol. I, Tab 6. On April 26, 1989, my assistant, James Conway, had a telephone conversation with Mr. Upshaw's assistant, Richard Berthelsen, about these matters. *See id.*, Tab 7. By letter dated April 28, 1989, Mr. Conway provided additional information to the NFLPA and suggested a meeting to discuss "salary and benefit levels" for Developmental Squad players. *Id.* On May 2, 1989, I mentioned to Mr. Upshaw at a hearing in Washington, D.C. that the two sides should meet to discuss these issues. *Id.*, Tab 9.

6. On May 18, 1989, I again wrote to Mr. Upshaw, this time proposing specific terms and conditions for Developmental Squad players that included "special services contract[s] providing for salaries of $1,000 per week, pro-rated on a daily basis." *Id.* The letter also suggested a meeting to discuss the pending proposals. *Id.* Mr. Upshaw finally responded by letter dated May 30, 1989, and indicated that the NFLPA would agree to the implementation of Developmental Squads only if such players were provided "the right to negotiate their own salaries." *Id.*, Tab 10. Mr. Upshaw reiterated this position at a meeting with Mr. Donlan (and others) on June 16, 1989. *Id.*, Tab 12. Further negotiations revealed that the two sides were at impasse over the uniform salary issue, *id.*, Tabs 12, 18, 19, 22, thus the League—in accordance with its rights and obligations under federal labor laws—implemented Resolution G-2 (as modified by my May 18 letter, in September 1989.

7. The proposal and eventual implementation of the $1,000 per week salary term was motivated by two primary factors. First, the Developmental Squad players were meant to be practice players. As such, these players were considered less valuable than all other NFL players, regardless of status. Since the minimum salary under the 1982 Collective Bargaining Agreement for non-active rookie players was (and is) $1,250, $1,000 per week was determined to be a reasonable wage. Second, Mr. Upshaw had previously suggested on two occasions that the League create 4-man practice squads, with each player on those squads receiving $400-$500 per week. *See id.*, Tab 16. Since Resolution G-2 doubled this proposed salary, it was again determined to be a reasonable wage.

8. The $1,000 per week salary was also important in precluding the stashing of quality players on Developmental Squads. Since this salary was appropriately pegged for practice players, those with more talent (and, hence, more marketability) were unwilling to be stashed in this

fashion. Instead, these players would hold out as free agents for a spot on a club's active roster and a commensurately higher salary. In this way, the $1,000 per week salary deterred abuses of Developmental Squads similar to those that had befallen injured reserve prior to 1989, and therefore made more effective the roster reforms contained in Resolution G-2.

9. The uniform nature of the salary term was also important in combatting the other negative aspect of "stashing"—that certain clubs were able to retain higher quality practice squads than other clubs. The uniform Developmental Squad salary eradicated this competitive disparity by ensuring that NFL teams had an approximately equal opportunity to obtain practice squads of comparable skill. Again, in this way, the uniform salary term was an essential ingredient in making effective the roster reforms contained in Resolution G-2.

10. Resolution G-2 was entirely successful in eradicating the abuses of the injured reserve rules. In addition, it offered additional employment opportunities through the Developmental Squad program to young players who otherwise would have been unable to receive any NFL experience. By providing this experience, Developmental Squads also heightened the competition for active roster spots in 1990 training camps, and thereby augmented the quality of play in the NFL.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ John M. Donlan
JOHN M. DONLAN

Dated: July 1, 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**DECLARATION OF JOEL BUSSERT**

1. I am Director of Player Personnel for the National Football League. In this capacity, I am primarily responsible for the monitoring and maintenance of League rules governing club rosters. I have carried out these responsibilities under my current and former titles for 15 years. I make this declaration on my own personal knowledge and am competent to testify to the matters stated herein.

2. The NFL adopted a new package of roster rules on March 22, 1989. These rules, contained in Resolution G-2, were designed to remedy a number of competitive abuses fostered by the previous system of rules—abuses that had created competitive disparities between clubs in establishing their playing squads. Thus, Resolution G-2 contained revisions to the injured reserve rules, established a maximum roster limit of 80 players, and created Developmental Squads—units of up to six rookies or first-year players who were allowed to practice with their clubs but not play in actual games.

3. A major concern addressed by Resolution G-2 was the League's injured reserve system. This system, which has been in place since the 1950's, was designed as a roster category for injured, hence incapacitated, players. If a player were injured, he could be placed on "injured reserve" ("IR") status and, though still under contract with the club and still receiving his salary, would not count against its active roster limit. In this way, teams could temporarily replace their injured players, thereby

retaining the rights to the services of these players while avoiding the competitive disadvantage of a depleted active roster.

4. Players in the injured reserve category initially were not allowed to practice. During the mid-1970's, however, NFL coaches requested that additional players be available for practices. Thus, in 1976 the League adopted a rule allowing IR players to practice if they were physically able to do so. In 1979, the League adopted a rule permitting each club to have a limited number of "free activiations"—opportunities to move players from injured reserve to the active roster. Prior to that time, a player placed on injured reserve could not return to his club's active roster for the duration of the regular season, unless the player had first been made available to all other clubs through the League's waiver system. A prime factor in fashioning these various approaches to the injured reserve category of players has always been competitive playing-field fairness to all of the member clubs, each differently situated.

5. The various rule changes regarding injured reserve during the 1970s and early 1980s had several unintended, but substantial, effects. First, some teams began to "stash" promising young players on the injured reserve list. "Stashing," which usually occurred just before the regular season began, allowed teams to retain the rights to quality players and develop them in practice without the player counting against the team's active roster. Stashing thus precluded other teams from signing these players to fill openings on their active rosters, and allowed young players or already proven veterans who would otherwise have been available to other teams—frequently weaker teams—either through waivers or as free agents.

Second, coaches began to view injured reserve as a primary source of additional practice players. Due to the increased specialization of NFL football during the 1980's and the substantial physical toll on active players due to

the longer 16-game regular season, some clubs began to rely on the injured reserve list for practice players. Thus, with the increasing number of "stashed" players filling out these injured reserve rosters, certain clubs were able to develop large practice squads.

6. As a result of these changes, and despite efforts by the League Office to avoid abuses or inequities, the number of players on injured reserve steadily increased from 1976 through 1988. In 1978, for example, the 28 NFL clubs carried a total of 216 players on injured reserve in the final week of the regular season. By contrast, in 1988, NFL clubs carried a total of 315 players on injured reserve in the final week of the season—approximately 20% of all players employed by clubs at that time. Clubs became increasingly concerned about the substantial disparities in the average number of injured reserve players retained by individual clubs. For instance, from 1985-88, several clubs carried an average of over 15 injured reserve players per week—twice as many as some other clubs.

7. In 1987 and 1988, NFL clubs expressed increasing concern about abuses of the injured reserve system and resulting competitive disparities between teams: through stashing, certain clubs were withholding quality players from the available talent pool; by retaining these players, certain clubs were able to develop squads of practice players and rest many members of their active squads. These concerns were expressed to me and to other members of the League Office staff and members of the NFL Competition Committee (composed of a limited group of NFL club officials).

8. Resolution G-2 was adopted in response to these concerns over injured reserve and particularly to combat the emergence of competitive disparities between clubs. Thus, the new package of roster rules included revisions to injured reserve that substantially restricted the conditions under which IR players would be allowed to prac-

tice. Since Resolution G-2 made it difficult for such players to practice, clubs had less incentive to stash quality players on injured reserve.

9. In the wake of these limitations, NFL coaches still wanted to hire practice players that would not be counted against their active roster limit. Thus, Resolution G-2 also contained provisions for the implementation of Developmental Squads—units of six rookies or first-year players per club that were allowed to practice but not play in actual games. Developmental Squads were a necessary compromise for the new restrictions imposed on injured reserve. In light of concerns expressed by the clubs, I do not believe that Resolution G-2 would have received the 21 votes needed to pass without the creation of Developmental Squads.[1]

10. An important element of the Developmental Squad program was the provision for a uniform salary to be paid to all players. This uniform salary term was regarded as an essential feature of the Developmental Squad program because of the concern that some teams could, for a variety of reasons, achieve a competitive advantage by continuing to stash quality players on their Developmental Squads. Because of their own perception of their skill level and marketability, players with recognized skills were less likely to choose the Developmental Squad option (and $1,000 per week) and more likely to hold out for an active roster spot (and higher compensation) with another club. Thus, the $1,000 per week salary served as an added deterrent against stashing and ensured that Developmental Squads were populated with practice players—and not with higher quality players likely to make another team's active roster.

11. The first title proposed for Developmental Squads was "Practice Squads"; it was ultimately rejected for fear that it was too demeaning. However, there was never any

[1] With Developmental Squads as part of the package, Resolution G-2 passed by a margin of 22 to 5, with one club abstaining.

question that Developmental Squad players were intended to be practice players. As such, these players were considered less valuable than all active, inactive, injured reserve, and other reserve category players. The $1,000 per week salary that was ultimately arrived at for Developmental Squad players was therefore pegged below the minimum salary earned by these other, more valuable categories of players.[2]

12. Under Resolution G-2, clubs were required to negotiate unexecuted contingent contracts with Developmental Squad players that would become effective if these players were promoted to their club's active roster. Similar contingent salary arrangements are widely used by NFL clubs as incentive for players to make the active roster. Such contracts, for example, will set one salary term for a player if he is placed in a reserve category (*e.g.*, injured reserve) and another, more substantial salary term if he makes the active list. As with these contracts, the contingent salaries offered to Developmental Squad players reflected the value of these players *as members of an active roster*. They did not reflect the value of these players' services in any other capacity.

13. Under Resolution G-2, only free agent players were allowed to sign Developmental Squad contracts. Thus, every player that eventually elected to join a Developmental Squad had a prior opportunity to seek employment (or "sell his services") as an active player with all 28 NFL clubs. Under these circumstances, the fact that a later player chose to join a Developmental Squad is indicative of his belief that this opportunity was perhaps his best chance to develop and eventually succeed as a player in the NFL.

14. The primary purpose behind Resolution G-2—and the creation of Developmental Squads—was to eliminate competitive abuses occurring under the previous

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[2] Under the 1982 Collective Bargaining Agreement, the minimum salary for inactive rookie players is $20,000, or $1,250 per week.

system of roster rules, not to replace injured reserve players with lower-price substitutes. In this, Resolution G-2 was successful. In 1989, I neither received nor learned of *any* complaints concerning the stashing of quality players. Nor am I aware of any evidence that clubs abused the new rules during the 1989 season. In sum, Resolution G-2 created a level playing field for all teams in the area of team rosters, a result crucial to the continued maintenance of competitive balance between NFL clubs.

15. In addition to helping eradicate the competitive abuses occurring under the previous year's system, Developmental Squads also offered a number of other benefits. First, they provided additional employment opportunities for a number of players who may otherwise have been unable to find employment with any NFL club. Second, because of these opportunities, young players were able to learn and develop their skills in an NFL environment. Third, Developmental Squads exposed more players to more coaches, thereby increasing the level of awareness of the available talent. Finally, given these latter two effects, some Developmental Squad players were able to compete more successfully for active roster spots in 1990 training camps. Because of these benefits, and the elimination of the problems besetting injured reserve, Resolution G-2 was clearly a superior system—both in terms of employment opportunities and competitive playing-field fairness—to what had come before.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Joel Bussert
JOEL BUSSERT

Date: July 3, 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**DECLARATION OF PAUL TAGLIABUE**

1. I am Commissioner of the National Football League and have held that position since November, 1989. Prior to my appointment as Commissioner, I was an attorney in private practice representing the NFL from 1969 to 1989 in a wide variety of matters. I make this declaration on my own personal knowledge and am competent to testify to the matters stated herein.

2. The National Football League is an unincorporated not-for-profit association comprised of 28 member clubs that operate professional football teams. The joint business of the NFL and its member clubs is the successful production and marketing of professional football games as public entertainment. In advancing this business purpose, the NFL clubs do not operate as independent economic competitors, but rather as co-owners of a common business enterprise.

3. The operations of the League and the economic relationship among the member clubs are governed by agreements integrating club operations in numerous respects. These agreements are reflected in the NFL Constitution and Bylaws and resolutions and policies adopted under these Bylaws. As set forth in these agreements, the League Office, under my supervision, administers the day-to-day business affairs of the NFL. In this capacity, the League Office performs a variety of functions for the member clubs, including creating yearly game schedules, negotiating and administering the national television con-

tracts that generate the largest share of club revenues, enforcing League rules (including rules to ensure the financial stability of all clubs), marketing and promoting the League's entertainment product, and protecting the integrity of the sport. All significant business decisions of the League, from expanding the League to include additional members to changing the rules of play, are determined jointly by member club vote.

4. The business of the League is to produce and market professional football as a public entertainment product. This product—NFL football—does not consist simply of football games themselves. Instead the NFL's product consists of an annual competition of interrelated games involving all 28 member clubs. The season is structured in a way that creates exciting division and conference championship races, an eleven game post-season tournament, and, ultimately, a Super Bowl game and League champion. Because the six division champions *and* the three other teams in each conference with the best won-loss records qualify for the playoffs, each regular season game is significant to every NFL club and its fans. The interconnected nature of this "season" of NFL football, and the uncertainty of outcome and vigor of playing field competition, makes the NFL's product a highly attractive form of entertainment product. It also distinguishes the NFL's product from other forms of entertainment and other products unilaterally produced and marketed by companies in traditional, horizontally competitive industries.

5. League sports entertainment, such as is produced by the NFL, is also different from "barnstorming," in which teams do not jointly produce a common product and usually make their own scheduling arrangements. Each game of this kind is an independent event, separate from and unrelated to all other contests. In the NFL, however, no single NFL club produces or could produce either the NFL product or a competing entertainment product. Rather, the clubs must jointly produce their

product if it is to have its unique appeal to the public, and they are committed to presenting this product exclusively through the NFL. The NFL clubs themselves have no separate business apart from the League, and no separate product of their own to sell.

6. Among the most important of the NFL's joint production arrangements are the club's agreements with respect to revenue sharing. Over 90 percent of club revenues are derived from revenue sources shared with every other club. For example, the television rights of all NFL teams for regular season and post-season play are jointly sold to the networks by the League under terms requiring the broadcasters to televise each regular season game of each team. These television revenues are divided equally among all clubs, providing each club with an interest in ensuring that the telecasts of other teams are broadly viewed. Gate receipts are also shared. In the preseason, gate receipts are shared equally; in the regular season, after limited deductions relating to operating costs, 40 percent of the gate receipts go to the visiting team and 60 percent going to the home team. Although a slightly higher percentage is provided to the home team as an incentive for successful local business operations, sharing of gate receipts provides both the home and visiting teams with an incentive to maximize attendance. In this way, each club benefits from other clubs having full stadiums and generating large gate receipts. The clubs also share post-season revenues, as well as revenues from licensing and filming operations. These measures have the effect of evenly distributing revenues among the better-situated clubs in larger markets and less well-off clubs in smaller markets, and are an essential component of the structure that permits the NFL to operate with 28 teams in a variety of disparate economic conditions throughout the United States.

7. The expenses of the League office are shared equally by all NFL teams. Substantial promotional activities (on behalf of the NFL and the teams generally) are conducted and paid for on a joint basis. Common trademark

licensing arrangements assure uniform quality control and promote equal public acceptance of the games of each team of the League. Common filming operations are also conducted and marketed through NFL Films.

8. Because of these relationships, each NFL member club has a direct economic interest in the successful business operation of each of the other member clubs in the League. Rather than acting as traditional horizontal competitors, the member clubs of the NFL are cooperative partners in a joint business venture. No NFL club has an interest in forcing another team out of business, or in seeing it seriously weakened financially. While the clubs *are* vigorous competitors on the playing field, they act as partners in conducting their joint business operations.

9. The joint venture nature of the NFL extends to the most fundamental aspects of individual club existence. Many of the current NFL clubs were added to the League by an agreement among other clubs then in existence. The existing clubs assisted new franchises in establishing themselves as business enterprises and as successful playing field competitors by, for example, sharing substantial revenues, making players available and assisting in the negotiation of favorable lease arrangements, etc. Under certain circumstances, all NFL clubs are contractually obligated to assist in solving problems that affect individual teams. For example, if a club has a disaster affecting its playing squad, the remaining clubs—by current League rules—must jointly supply that team with replacement players. This is not business conduct ordinarily expected of, or engaged in by, ordinary business competitors.

10. The joint venture characteristics of the NFL have been recognized by numerous courts and in many cases that I was involved with as counsel to the League. *See Smith* v. *Pro Football Inc.*, 593 F.2d 1173, 1178-79 (D.C. Cir. 1978) ("The clubs operate basically as a joint venture."); *Mackey* v. *National Football League*, 543

F.2d 606, 619 (8th Cir. 1976) (the "NFL has *some* of the characteristics of a joint venture"), *cert. dismissed*, 434 U.S. 801 (1977); *WTWV, Inc.* v. *National Football League*, 678 F.2d 142, 144 (11th Cir. 1982) (NFL members operate as "co-producers of a common entertainment product"); *Mid-South Grizzlies* v. *National Football League*, 550 F. Supp. 558, 567-68 & n.22 (E.D. Penn. 1982) (" 'a league is . . . like a partnership' "), *aff'd*, 720 F.2d 772 (3d Cir. 1983), *cert. denied*, 467, U.S. 1215 (1984); *see also North American Soccer League* v. *National Football League*, 670 F.2d 1249, 1251 (2d Cir.), *cert. denied*, 459 U.S. 1074 (1982) (the NFL is an "unincorporated joint venture"). These courts have simply reaffirmed the conclusions of Judge Grim, when he first recognized in 1953 that "[p]rofessional football is a unique type of business":

> Professional teams in a league . . . must not compete too well with each other in a business way. On the playing field, of course, they must compete as hard as they can all the time. But it is not necessary and indeed it is unwise for all the teams to compete as hard as they can against each other in a business way. If all the teams should compete as hard as they can in a business way, the stronger teams would be likely to drive the weaker ones into financial failure. If this should happen not only would the weaker teams fail, but eventually the whole league, both the weaker and the stronger teams, would fail, because without a league no team can operate profitably.

*United States* v. *National Football League*, 116 F. Supp. 319, 323 (E.D. Pa. 1953). In short, the clubs must cooperate in their busines affairs so that they can effectively sell competition on the playing field.

11. In addition to these economic relationships, the member clubs—through the League—have instituted rules designed to foster competitive balance among teams on the playing field. Competitive balance is crucial to the

popularity of the NFL's product since that product—in its most attractive and marketable form—is close, exciting contests between evenly-matched clubs that lead to hotly contested divisional and conference races. Thus, for example, the NFL's college draft, as developed and implemented since 1977 through a series of collectively bargained agreements with the National Football League Players Association ("NFLPA"), provides a mechanism to distribute equitably incoming talent by providing for the clubs' selections in an inverse order of the previous year's won-loss records. The team with the worst record in the prior year has the first selection of eligible college players. Similarly, through the League's "waiver" system, teams with the poorest records are given the first opportunity to claim players who are released from their old clubs. The League's scheduling format takes into account competitive balance in a variety of ways to ensure that all teams are playing a schedule of comparable strength. Further, the League—in conjunction with the NFLPA—has adopted a system of rules governing veteran player movement among teams. These provisions, as set forth in the first-refusal/compensation arrangements collectively bargained with the NFLPA, remain in effect to ensure that the best or wealthiest franchises are not able to hire all of the League's best veteran players and thereby create competitive imbalance throughout the League.

12. As more fully set forth in the accompanying Declaration of Joel Bussert, the League's roster and player eligibility rules—including Resolution G-2—are another example of the arrangements agreed to by member clubs for the purpose of promoting competitive balance.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Paul J. Tagliabue
PAUL J. TAGLIABUE

Date: July 5, 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

Pursuant to Local Rule 108(h), defendants set forth below their response to each fact that plaintiffs assert in their Supplemental Statement is material and not in genuine dispute. By not disputing an asserted fact, defendants do not agree that such fact, or the evidence offered in support thereof, is relevant, material or admissible evidence. Defendants reserve all their rights and objections in such regards.

* * * *

37. Not disputed.

38. Not disputed, if by "dress and play," defendants refer to each week's game.

39. Defendants do not dispute the first sentence of this paragraph. Defendants do dispute the second sentence, to the extent that it asserts that each NFL player listed as inactive for a given week received the same salary for that week that he would have received if he had been listed as an active player.

40. Defendants dispute the first sentence of this paragraph to the extent that it asserts that each NFL player listed as reserve/injured ("IR") for a given week received the same salary that he would have received had he been listed as an active player for that week. Defendants do not dispute the second sentence of this paragraph.

41. Aside from typographical errors and edded emphasis in plaintiffs' recitation of the NFL's Constitution and Bylaws, defendants do not dispute that this paragraph quotes accurately from the NFL Constitution and Bylaws.

42. Defendants dispute this paragraph, which fails to report accurately the figures cited at Tab 44, Exhibit C, and which reflects figures with which defendants disagree.

43. Aside from an inaccurate juxtaposition of player names and team names, defendants do not dispute this paragraph.

44. Aside from the addition of bracketed phrase and emphasis, defendants do not dispute that this paragraph accurately quotes a portion of a document containing the recommendation of the Committee. Defendants do, however, dispute plaintiffs' characterization of the purpose of Resolution G-2.

45. Aside from certain typographical errors, and added emphasis, defendants do not dispute that this paragraph quotes accurately from a portion of Resolution G-2.

46. Defendants dispute the assertion that "a principal purpose of the G-2 Resolution was to reduce the Clubs' player-costs." Defendants dispute the remainder of this paragraph, which is hearsay.

47. Defendants dispute the first sentence of this paragraph. Defendants do not dispute the second sentence of this paragraph.

48. Defendants dispute the figures cited in the first sentence of this paragraph, which reflects calculations with which defendants disagree. Defendants dispute the second sentence of this paragraph.

49. Aside from certain typographical errors and added emphasis, defendants do not dispute that this paragraph quotes accurately from a "Q&A" sheet concerning Resolution G-2.

50. Defendants do not dispute that Tab 43 contains memoranda that NFL clubs sent to the League Office in 1989 concerning additions and subtractions from their developmental squad and injured reserve lists. To the extent that this paragraph asserts any other facts, they are disputed.

51. Defendants do not dispute that this paragraph quotes accurately from pp-112-89, a Player-Personnel directive sent to all NFL clubs concerning game day activities.

52. Defendants dispute this paragraph, which mischaracterizes defendants' discovery responses.

53. Defendants dispute this paragraph, which mischaracterizes defendants' discovery responses.

54. Defendants dispute this paragraph, which reflects calculations with which defendants disagree.

55. Defendants do not dispute the first three sentences of this paragraph. Defendants dispute the fourth sentence of this paragraph, which is not supported by the material located at Tab 48, Paragraph 4.

Respectfully submitted,

/s/ Richard W. Buchanan
HERBERT DYM
Bar No. 53827
GREGG H. LEVY
Bar No. 941161
JEFFREY PASH
Bar No. 335174
RICHARD W. BUCHANAN
Bar No. 419571
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(202) 662-6000
Attorneys for Defendants
National Football League and
Its Twenty-Eight Member Clubs

[Filed Sep. 2, 1992]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**MEMORANDUM OPINION AND ORDER**

This case comes before the court on NFL Defendants' Motion for Reconsideration or, in the Alternative, Certification for Interlocutory Review of this Court's Memorandum Opinion of March 10, 1992 (Defendants' Motion); Plaintiffs' Opposition to NFL Defendants' Motion for Reconsideration or, in the Alternative, Certification for Interlocutory Review (Plaintiffs' Opposition); and NFL Defendants' Reply Memorandum in Support of Motion for Reconsideration or, in the Alternative, Certification for Interlocutory Review (Plaintiffs' Reply). Upon consideration of the authorities presented in these memoranda and the record herein, the court will deny Defendants' Motion for Reconsideration and will not certify this case for interlocutory review.

## I. FACTS

On June 4, 1991, this court, by memorandum opinion, granted Plaintiff's Motion to Strike the Defendants' Nonstatutory Labor Exemption Defense. In a second memorandum opinion, filed March 10, 1992, the court granted Plaintiffs' Motion for Summary Judgment on Liability. The relevant facts are extensively presented in these two opinions.

## II. RECONSIDERATION.

### A. *March 10, 1992, Memorandum Opinion.*

In the March 10 opinion, the court first examined the salary restraints imposed by the NFL Defendants and

held that the restraints were subject to the antitrust laws. The court then looked to see whether the restraints were imposed in volation of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. § 1 (1973 & Supp. 1991). After finding that the wage-fixing could not be termed a *per se* violation of the antitrust laws, the court turned to a Rule of Reason analysis. It is this analysis defendants today challenge.

The Rule of Reason requires the judge to balance the anti-competitive evils of a practice against its pro-competitive virtues. On the negative side of this balance, the court noted that the salary restraints clearly were anti-competitive in effect. On the other half of this balance, however, the court found no pro-competitive virtues. The court held that two pro-competitive purposes advanced by the defendants—enhanced competition in the labor market for professional football players and the creation of otherwise unavailable football employment opportunities—were irrelevant for lack of correlation between the restraints and the pro-competitive purposes. A third justification, the maintenance of a competitive balance among football teams, was deemed irrelevant under the D.C. Circuit's holding in *Smith v. Pro Football, Inc.*, 593 F.2d 1173 (D.C. Cir. 1978).

In *Smith*, a professional football player challenged the NFL's player draft as violative of § 1 of the Sherman Antitrust Act. Under the Rule of Reason analysis, the NFL asserted the draft's ultimate pro-competitive effect justified the draft system despite its anti-competitive evils. The NFL claimed that the player draft promoted a "competitive balance" among teams, thus "producing better entertainment for the public, higher salaries for the players, and increased financial security for the clubs." 593 F.2d at 1186. However, the D.C. Circuit held that the pro-competitive virtues, which were evident only on the playing field, could not be compared to the anti-competitive evils, which were apparent solely in the market for

player services. *Id.* As a result, the player draft was held to be unreasonable and a violation of the Sherman Act.

This court found that the salary restraints presently at issue were directly comparable to the player draft in *Smith.* Therefore, this court held the NFL defendants' third pro-competitive justification, the promotion of competitive balance, irrelevant under the law of this circuit. With no relevant pro-competitive virtues left to balance the clear anti-competitive evils, the court determined that the salary restraints were violative of the antitrust laws and ordered summary judgment on liability for the plaintiffs.

B. Defendants' Motion to Reconsider.

Defendants' Motion to Reconsider is grounded on defendants' reading of the Supreme Court's opinion in *NCAA v. Board of Regents of the University of Oklahoma,* 468 U.S. 85 (1984). In that case, the NCAA had imposed a restrictive television broadcasting plan for football games upon all its member universities. The University of Oklahoma challenged the restraint as a violation of antitrust laws. As in the present case, the Court did not find a *per se* violation of antitrust laws but nonetheless held the restraint unreasonable under a Rule of Reason analysis.

According to defendants' memorandum, the Supreme Court's language in *NCAA* "undermined, if not vitiated," the D.C. Circuit's opinion in *Smith.* Defendants' Motion at 2. In *NCAA,* the Court referred to the maintenance of competitive balance as a "pro-competitive justification under the Rule of Reason." 468 U.S. at 119-20.[1] The defendants assert that the NFL defendants' salary restraints

[1] The Court found this justification unavailing, however, and nonetheless held that the television regulation violated antitrust laws.

likewise help to maintain a competitive balance among the teams and is therefore a pro-competitive virtue that outweighs their anti-competitive vice.

However, *NCAA* is clearly distinguishable from both *Smith* and the present case. The "product" at issue in *NCAA* was unique—college football, a sport which weds the competition of athletics and the tradition of academics. The "character and quality" of the product—indeed, its very "integrity"—"cannot be preserved except by mutual agreement." 468 U.S. at 101-02. Without restrictions on player eligibility and academic requirements, *amateur college* football would cease to exist. Therefore, these restrictions, though clearly restraints on trade, 468 U.S. at 98, are not necessarily unreasonable since they actually "widen consumer choice—not only the choices available to sports fans but also those available to athletes." 468 U.S. at 102. Thus, they do not violate the antitrust laws.

The salary restraints here at issue, however, cannot be said to be vital to the preservation of professional football. Indeed, *professional* football as an organization would survive with or without the mandatory $1,000 a week salary restraint. As the Supreme Court emphasized in *NCAA*, the focus of the inquiry must be on reasonableness. Although some agreements among the football teams may be reasonable, it is not reasonable to allow the NFL to promulgate nonessential regulations, such as those in this case.

Since *NCAA* is not applicable to this case, the D.C. Circuit's ruling in *Smith* is still good law in this circuit. Therefore, as this court's previous opinion held, the pro-competitive virtues the NFL defendants claim are not relevant to the Rule of Reason analysis, and reconsideration of the court's March 10, 1992, opinion is DENIED.

III. CERTIFICATION.

As the NFL defendants acknowledge in their memorandum, certification for interlocutory review is only appropriate when "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Given that the trial on damages is imminent, it is evident that it would not expedite the ultimate termination of this litigation to delay the proceedings for an interlocutory appeal. Therefore, the defendants' motion to certify for interlocutory review is DENIED.

IV. CONCLUSION

For the reasons set forth herein, defendants' motion for reconsideration is DENIED. Defendants' motion, in the alternative, for certification is also DENIED.

SO ORDERED.

/s/ Royce C. Lamberth
ROYCE C. LAMBERTH
United States District Judge

Date: Sept. 2, 1992

[Filed Oct. 5, 1992]

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

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**JUDGMENT ON THE VERDICT**
(For Plaintiffs)

This cause having been tried by the Court and a Jury, before the Honorbale Royce C. Lamberth, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its special verdicts; now, therefore, pursuant to the special verdicts,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiffs have and recover of and from the defendants: PRO FOOTBALL, INC., d/b/a WASHINGTON REDSKINS; THE FIVE SMITHS, INC., d/b/a ATLANTA FALCONS; BUFFALO BILLS, INC., d/b/a BUFFALO BILLS; CHICAGO BEARS FOOTBALL CLUB, INC., d/b/a CHICAGO BEARS; CINCINNATI BENGALS, INC., d/b/a CINCINNATI BENGALS; CLEVELAND BROWNS, INC., d/b/a CLEVELAND BROWNS; DALLAS COWBOYS FOOTBALL CLUB, LTD., d/b/a DALLAS COWBOYS; PDB SPORTS, LTD., d/b/a DENVER BRONCOS; THE DETROIT LIONS, INC., d/b/a DETROIT LIONS; THE GREEN BAY PACKERS, INC., d/b/a GREEN BAY PACKERS; HOUSTON OILERS, INC., d/b/a HOUSTON OILERS; INDIANAPOLIS COLTS, INC., d/b/a INDIANAPOLIS COLTS; KANSAS CITY CHIEFS FOOTBALL CLUB, INC., d/b/a KANSAS CITY CHIEFS; THE LOS ANGELES RAIDERS, LTD., d/b/a LOS ANGELES RAIDERS; LOS ANGELES RAMS FOOTBALL COMPANY, INC., d/b/a LOS ANGELES RAMS; MIAMI DOL-

PHINS, LTD., d/b/a MIAMI DOLPHINS; MINNESOTA VIKINGS FOOTBALL CLUB, INC., d/b/a MINNESOTA VIKINGS; KMS PATRIOTS, L.P., d/b/a NEW ENGLAND PATRIOTS; THE NEW ORLEANS LOUISIANA SAINTS LIMITED PARTNERSHIP, d/b/a NEW ORLEANS SAINTS; NEW YORK FOOTBALL GIANTS, INC., d/b/a NEW YORK GIANTS; NEW YORK JETS FOOTBALL CLUB., INC., d/b/a NEW YORK JETS; THE PHILADELPHIA EAGLES FOOTBALL CLUB, INC., d/b/a PHILADELPHIA EAGLES; B & B HOLDINGS, INC., d/b/a PHOENIX CARDINALS; PITTSBURGH STEELERS SPORTS, INC., d/b/a PITTSBURGH STEELERS; THE CHARGERS FOOTBALL COMPANY, d/b/a SAN DIEGO CHARGERS; THE SAN FRANCISCO FORTY-NINERS, LTD., d/b/a SAN FRANCISCO FORTY-NINERS; THE SEATTLE PROFESSIONAL FOOTBALL CLUB, d/b/a SEATTLE SEAHAWKS; TAMPA BAY AREA NFL FOOTBALL, INC., d/b/a TAMPA BAY BUCCANEERS; and THE NATIONAL FOOTBALL LEAGUE, the following sums for each Plaintiff class member, together with costs:

| | | |
|---|---|---|
| 1. | Aeilts, Rick | $135,000.00 |
| 2. | Alexander, Bruce | $73,500.00 |
| 3. | Andrews, Ricky | $108,000.00 |
| 4. | Ankrom, Scott | $21,187.50 |
| 5. | Antrum, Glenn | $132,750.00 |
| 6. | Ashe, Richard | $189,000.00 |
| 7. | Avery, Steve | $77,625.00 |
| 8. | Bailey, David | $177,000.00 |
| 9. | Bankston, Lon | $49,500.00 |
| 10. | Barber, Mike | $83,250.00 |
| 11. | Barnes, Reggie | $177,000.00 |
| 12. | Bauman, Charles | $12,937.50 |
| 13. | Baxter, Brad | $73,125.00 |
| 14. | Bayless, Rick | $114,750.00 |
| 15. | Beach, Sanjay | $180,000.00 |
| 16. | Becker, Chris | $84,000.00 |
| 17. | Bell, Billy | $132,000.00 |

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| 18. | Bell, Grantis | $147,000.00 |
| 19. | Bell, Jim | $238,500.00 |
| 20. | Berardelli, Paul | $177,000.00 |
| 21. | Bero, Bryan | $192,000.00 |
| 22. | Birden, J.J. | $108,000.00 |
| 23. | Bishop, Jim | $30,375.00 |
| 24. | Bob, Adam | $125,812.50 |
| 25. | Bone, Warren | $12,000.00 |
| 26. | Bouyer, Willie | $110,250.00 |
| 27. | Bowick, Tony | $25,875.00 |
| 28. | Brantley, John | $42,750.00 |
| 29. | Brinkley, Lester | $219,000.00 |
| 30. | Brinson, Dana | $44,250.00 |
| 31. | Brooks, Michael | $168,000.00 |
| 32. | Brown, Eric | $27,562.50 |
| 33. | Brown, Henry | $55,687.50 |
| 34. | Brown, Tony | $426,000.00 |
| 35. | Buddenberg, John | $164,625.00 |
| 36. | Burch, John | $177,000.00 |
| 37. | Burman, Jon | $90,750.00 |
| 38. | Burnice, Karl | $132,000.00 |
| 39. | Cain, Joe | $45,937.50 |
| 40. | Carey, Richard | $99,562.50 |
| 41. | Carlson, Jeff | $264,000.00 |
| 42. | Carter, Jon | $31,500.00 |
| 43. | Chandler, Darren | $111,000.00 |
| 44. | Chapman, Ted | $20,250.00 |
| 45. | Cheattom, Ken | $63,000.00 |
| 46. | Chenault, Chris | $177,000.00 |
| 47. | Childress, Fred | $105,750.00 |
| 48. | Cole, Leon | $201,000.00 |
| 49. | Coley, James | $177,000.00 |
| 50. | Cooks, Terrence | $121,500.00 |
| 51. | Cooper, George | $198,000.00 |
| 52. | Cooper, Richard | $147,000.00 |
| 53. | Cormier, Joe | $141,750.00 |
| 54. | Couch, Gary | $128,625.00 |
| 55. | Cribbs, James | $18,375.00 |
| 56. | Crudup, Derrick | $158,625.00 |
| 57. | Cullity, Dave | $280,500.00 |
| 58. | Davis, Craig | $66,375.00 |

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|---|---|---|
| 59. | Davis, Pat | $181,125.00 |
| 60. | Delaney, Jarrod | $149,156.25 |
| 61. | Derby, Glenn | $49,875.00 |
| 62. | Dial, Alan | $96,000.00 |
| 63. | Duncan, Herb | $144,000.00 |
| 64. | Edeen, David | $154,031.25 |
| 65. | Edwards, Anthony | $60,750.00 |
| 66. | Egu, Patrick | $96,000.00 |
| 67. | Ervin, Corris | $101,812.50 |
| 68. | Farr, Mel | $194,062.50 |
| 69. | Feggins, Howard | $51,750.00 |
| 70. | Finch, Lonnie | $36,575.85 |
| 71. | Flesher, Tom | $36,000.00 |
| 72. | Florence, A. | $207,000.00 |
| 73. | Floyd, Eric | $143,812.50 |
| 74. | Floyd, Victor | $101,250.00 |
| 75. | Ford, Bernard | $162,000.00 |
| 76. | Francis, Jeff | $297,000.00 |
| 77. | Franklin, Jethro | $108,000.00 |
| 78. | Fuller, Joe | $111,750.00 |
| 79. | Gabbard, Steve | $151,875.00 |
| 80. | Gainer, Derrick | $295,125.00 |
| 81. | Garrett, Jason | $147,000.00 |
| 82. | Garrett, John | $154,875.00 |
| 83. | Gicewicz, Rich | $130,312.50 |
| 84. | Gilbert, Greg | $152,625.00 |
| 85. | Glover, Deval | $276,000.00 |
| 86. | Gordon, Cedric | $137,812.50 |
| 87. | Goss, Antonio | $156,000.00 |
| 88. | Gouldsby, Mace | $98,062.50 |
| 89. | Graham, Jeff | $276,000.00 |
| 90. | Graybill, Mike | $89,437.50 |
| 91. | Green, Paul | $195,000.00 |
| 92. | Greene, A. J. | $201,000.00 |
| 93. | Griggs, David | $137,156.25 |
| 94. | Gruden, Jay | $2,892.90 |
| 95. | Hall, Mark | $63,562.50 |
| 96. | Hamilton, Darrell | $167,062.50 |
| 97. | Harris, Michael | $64,312.50 |
| 98. | Harris, Rod | $48,000.00 |
| 99. | Harry, Carl | $151,875.00 |

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|---|---|---|
| 100. | Hartlieb, Chuck | $315,937.50 |
| 101. | Harvey, John | $91,875.00 |
| 102. | Harvey, Stacy | $64,687.50 |
| 103. | Haselrig, Carlton | $219,000.00 |
| 104. | Hegarty, Pat | $171,000.00 |
| 105. | Henderson, Joe | $282,000.00 |
| 106. | Hendrickson, S. | $14,343.75 |
| 107. | Henke, Brad | $259,875.00 |
| 108. | Henley, Thomas | $58,500.00 |
| 109. | Henry, Charles | $260,625.00 |
| 110. | Hess, Bill | $2,892.90 |
| 111. | Holloway, Cornell | $252,000.00 |
| 112. | Holt, Glen | $27,562.50 |
| 113. | Jackson, Tim | $121,687.50 |
| 114. | Jarvis, Ralph | $157,500.00 |
| 115. | Javis, John | $151,875.00 |
| 116. | Jaworksi, Matt | $213,000.00 |
| 117. | Jefferson, Ben | $224,812.50 |
| 118. | Jennings, Keith | $94,500.00 |
| 119. | Johnson, Kenneth | $123,000.00 |
| 120. | Johnson, Undra | $77,625.00 |
| 121. | Johnson, Wayne | $173,250.00 |
| 122. | Joines, Vernon | $200,250.00 |
| 123. | Jokisch, Paul | $146,062.50 |
| 124. | Jones, Bill | $78,468.75 |
| 125. | Jones, Eric | $101,062.50 |
| 126. | Jones, Tyrone | $146,625.00 |
| 127. | Jorden, Tim | $207,000.00 |
| 128. | Kaumeyer, Thom | $180,000.00 |
| 129. | Kirby, Scott | $91,875.00 |
| 130. | Knapton, Jeff | $48,000.00 |
| 131. | Knight, Leander | $36,000.00 |
| 132. | Langley, Andre | $60,750.00 |
| 133. | Leggett, Jerry | $130,955.40 |
| 134. | Limbrick, G. | $20,250.00 |
| 135. | Lindstrom, Eric | $67,031.25 |
| 136. | Lloyd, Doug | $267,000.00 |
| 137. | Lossow, Rodney | $234,000.00 |
| 138. | Lyons, Robert | $77,437.50 |
| 139. | Marlatt, Pat | $111,375.00 |
| 140. | Marshall, D. | $276,000.00 |

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|---|---|---|
| 141. | Martin, Tony | $151,875.00 |
| 142. | Mayes, Michael | $94,500.00 |
| 143. | McGruder, M. | $387,562.50 |
| 144. | McNair, Todd | $22,500.00 |
| 145. | McNeil, Emanuel | $194,062.50 |
| 146. | Mehre, Harry | $131,625.00 |
| 147. | Messner, Mark | $108,000.00 |
| 148. | Mickel, Jeff | $198,000.00 |
| 149. | Miller, John | $64,312.50 |
| 150. | Miotke, Frank | $276,000.00 |
| 151. | Mitchel, Eric | $13,875.00 |
| 152. | Mitchell, Alvin | $87,750.00 |
| 153. | Molander, Scooter | $72,000.00 |
| 154. | Moore, Tim | $18,375.00 |
| 155. | Moyer, Ken | $55,312.50 |
| 156. | Murray, Dan | $126,000.00 |
| 157. | Nedved, Jeff | $74,625.00 |
| 158. | Nicholson, C. | $133,875.00 |
| 159. | Nittmo, Bjorn | $148,125.00 |
| 160. | Norgard, Erik | $187,968.75 |
| 161. | Norris, Darren | $129,375.00 |
| 162. | Oliver, Jeff | $121,687.50 |
| 163. | Oliver, Maurice | $131,625.00 |
| 164. | Oliver, Robert | $41,250.00 |
| 165. | Orlando, Bo | $195,000.00 |
| 166. | Owens, Kerry | $306,000.00 |
| 167. | Patchan, Matt | $42,750.00 |
| 168. | Paterra, Greg | $77,625.00 |
| 169. | Pettyjohn, Barry | $177,000.00 |
| 170. | Philcox, Todd | $177,000.00 |
| 171. | Popp, Dave | $231,000.00 |
| 172. | Pritchett, Wes | $276,000.00 |
| 173. | Roach, Kirk | $15,750.00 |
| 174. | Robbins, Kevin | $414,000.00 |
| 175. | Robinson, Lybrant | $121,687.50 |
| 176. | Rogers, Tracy | $195,000.00 |
| 177. | Roland, Benji | $207,000.00 |
| 178. | Ross, Greg | $9,187.50 |
| 179. | Roth, Jeff | $34,125.00 |
| 180. | Sadowski, Troy | $38,812.50 |
| 181. | Samuel, Peda | $16,500.00 |

| | | |
|---|---|---|
| 182. | Sancho, Ron | $186,000.00 |
| 183. | Sargent, Anthony | $157,500.00 |
| 184. | Searels, Stacy | $252,000.00 |
| 185. | Shelton, Richard | $96,000.00 |
| 186. | Shiver, Stan | $147,000.00 |
| 187. | Shorts, Peter | $165,937.50 |
| 188. | Siglar, Ricky | $388,875.00 |
| 189. | Simien, Kevin | $207,000.00 |
| 190. | Simien, Tracy | $184,500.00 |
| 191. | Simmons, Michael | $137,812.50 |
| 192. | Simpson, John | $36,750.00 |
| 193. | Singer, Paul | $180,562.50 |
| 194. | Smiley, Tim | $246,187.50 |
| 195. | Smith, Elliot | $168,000.00 |
| 196. | Smith, Vernice | $70,875.00 |
| 197. | Snead, Willie | $12,000.00 |
| 198. | Snyder, Brent | $177,000.00 |
| 199. | Spears, Anthony | $184,500.00 |
| 200. | Stephens, Richard | $55,312.50 |
| 201. | Stephens, Rod | $36,750.00 |
| 202. | Stephenson, Jeff | $78,375.00 |
| 203. | Sterling, Rod | $60,750.00 |
| 204. | Stewart, Curtis | $121,500.00 |
| 205. | Stock, Mark | $103,500.00 |
| 206. | Streeter, George | $84,750.00 |
| 207. | Strom, Rick | $55,312.50 |
| 208. | Stryzinski, Dan | $12,000.00 |
| 209. | Talley, John | $163,312.50 |
| 210. | Tanner, Randy | $11,062.50 |
| 211. | Tardits, Richard | $213,000.00 |
| 212. | Taylor, Brian | $88,500.00 |
| 213. | Taylor, Craig | $22,125.00 |
| 214. | Thompson, Bennie | $194,250.00 |
| 215. | Tippins, Ken | $55,312.50 |
| 216. | Turner, Marcus | $47,250.00 |
| 217. | Usher, Darryl | $23,250.00 |
| 218. | Van Druten, R. | $155,250.00 |
| 219. | Waddle, Tom | $116,531.25 |
| 220. | Walton, Tim | $119,437.50 |
| 221. | Ware, Reggie | $15,750.00 |
| 222. | Weidner, Robert | $147,000.00 |

| | | |
|---|---|---|
| 223. | Wells, Dana | $31,950.00 |
| 224. | Werner, Greg | $60,000.00 |
| 225. | Weston, Rhondy | $40,875.00 |
| 226. | Wheeler, Todd | $45,937.50 |
| 227. | Whitaker, Danta | $201,000.00 |
| 228. | White, Todd | $45,937.50 |
| 229. | Wilkerson, Eric | $123,750.00 |
| 230. | Wilkerson, Gary | $210,000.00 |
| 231. | Williams, Mike | $91,875.00 |
| 232. | Williams, Ronnie | $15,750.00 |
| 233. | Williams, Wayne | $165,937.50 |
| 234. | Woods, Jerry | $131,625.00 |
| 235. | Zackery, Tony | $194,062.50 |

NANCY MAYER-WHITTINGTON
Clerk

Dated: October 5, 1992

By: /s/ Francis L. Gilbert

[Filed May 12, 1993]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**PERMANENT INJUNCTION**

Upon consideration of Plaintiffs' Motion for Permanent Injunction and the Court being fully apprised, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendants PRO FOOTBALL, INC., d/b/a WASHINGTON REDSKINS; THE FIVE SMITHS, INC., d/b/a ATLANTA FALCONS; BUFFALO BILLS, INC., d/b/a BUFFALO BILLS; CHICAGO BEARS FOOTBALL CLUB, INC., d/b/a CHICAGO BEARS; CINCINNATI BENGALS, INC., d/b/a CINCINNATI BENGALS; CLEVELAND BROWNS, INC., d/b/a CLEVELAND BROWNS; DALLAS COWBOYS FOOTBALL CLUB, LTD., d/b/a DALLAS COWBOYS; PDB SPORTS, LTD., d/b/a DENVER BRONCOS; THE DETROIT LIONS, INC., d/b/a DETROIT LIONS; THE GREEN BAY PACKERS, INC., d/b/a GREEN BAY PACKERS; HOUSTON OILERS, INC., d/b/a HOUSTON OILERS; INDIANAPOLIS COLTS, INC., d/b/a INDIANAPOLIS COLTS; KANSAS CITY CHIEFS FOOTBALL CLUB, INC., d/b/a KANSAS CITY CHIEFS; THE LOS ANGELES RAIDERS, LTD., d/b/a LOS ANGELES RAIDERS; LOS ANGELES RAMS FOOTBALL COMPANY, INC., d/b/a LOS ANGELES RAMS; MIAMI DOLPHINS, LTD., d/b/a MIAMI DOLPHINS; MINNESOTA VIKINGS FOOTBALL CLUB, INC., d/b/a MINNESOTA VIKINGS; KMS PATRIOTS, L.P., d/b/a NEW ENGLAND PATRIOTS; THE NEW ORLEANS LOUISIANA SAINTS LIMITED PARTNERSHIP, d/b/a

NEW ORLEANS SAINTS; NEW YORK FOOTBALL GIANTS, INC., d/b/a NEW YORK GIANTS; NEW YORK JETS FOOTBALL CLUB, INC., d/b/a NEW YORK JETS; THE PHILADELPHIA EAGLES FOOTBALL CLUB, INC., d/b/a PHILADELPHIA EAGLES; B & B HOLDINGS, INC., d/b/a PHOENIX CARDINALS; PITTSBURGH STEELERS SPORTS, INC., d/b/a PITTSBURGH STEELERS; THE CHARGERS FOOTBALL COMPANY, d/b/a SAN DIEGO CHARGERS; THE SAN FRANCISCO FORTY-NINERS, LTD., d/b/a SAN FRANCISCO FORTY-NINERS; THE SEATTLE PROFESSIONAL FOOTBALL CLUB, d/b/a SEATTLE SEAHAWKS; TAMPA BAY AREA NFL FOOTBALL, INC., d/b/a TAMPA BAY BUCCANEERS; and NATIONAL FOOTBALL LEAGUE are permanently enjoined, and shall refrain, from agreeing among themselves, from conspiring, and/or from performing any act in furtherance of any agreement or conspiracy, to establish, whether overtly or otherwise, a uniform regular-season salary for any category of players whom Defendants may at any time employ.

/s/ Royce C. Lamberth
United States District Judge

Dated: May 12, 1993

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[Title Omitted in Printing]

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**NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Notice is hereby given that all defendants in this action (identified in the caption above) hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the final judgment issued in this action on May 12, 1993. This appeal encompasses all prior non-final orders and all rulings which produced and supported the judgment, including, but not limited to: the Order entered on July 3, 1990 (certifying the plaintiff class); the Order entered on July 6, 1990 (amending the class certification); the Order entered on June 4, 1991 (summary judgment on labor exemption); the Order entered on March 10, 1992 (summary judgment on liability); the Order entered on September 2, 1992 (reconsideration or certification of liability ruling); the Order entered on September 11, 1992 (decertification of the class); the Order entered September 28, 1992 (motions *in limine*); the Judgment on the Verdict entered on October 5, 1992; the Order entered May 12, 1993 (defendants' motion for judgment as a matter of law or for a new trial, plaintiffs' motion for a permanent injunction); and the Order entered on August 27, 1993 (defendants' motion to vacate permanent injunction).

Respectfully submitted,

/s/ Richard W. Buchanan
HERBERT DYM
Bar No. 53827
PETER J. NICKLES
Bar No. 53447
GREGG H. LEVY
Bar No. 941161
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(202) 662-6000
Attorneys for Defendants
National Football League and
Its Twenty-Eight Member Clubs

Dated: September 10, 1993

# UNITED STATES COURT OF APPEALS
# FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Consolidated Case Nos. 93-7102, 93-7165

ANTONY BROWN, *et al.*,
*Plaintiffs-Appellees,*
v.

PRO FOOTBALL, INC., d/b/a
WASHINGTON REDSKINS, *et al.*,
*Defendants-Appellants.*

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## APPELLANTS' STATEMENT OF ISSUES

1. Whether the District Court erred as a matter of law when it certified, and then refused to decertify, a plaintiff class of 235 Developmental Squad players, despite the predominance of individualized issues relating to each player's claim of injury and damages, and despite the jury confusion and prejudice to defendants caused thereby.

2. Whether the District Court erred as a matter of law when it determined that the antitrust laws are applicable to the employment terms at issue in this case, despite the fact that section 6 of the Clayton Act makes such laws inapplicable to alleged restraints—such as those at issue here—that affect only the labor market.

3. Whether the District Court erred as a matter of law when it ruled, on summary judgment, that plaintiffs' antitrust claims were not barred by the nonstatutory labor exemption to the antitrust laws, despite the fact that the challenged terms of employment were both conceived and implemented during an ongoing collective bargaining relationship between the parties.

4. Whether the District Court erred as a matter of law when it ruled, on summary judgment, that the uniform salaries paid to 1989 NFL Developmental Squad players violated the antitrust laws under the Rule of Reason, despite the fact that the case upon which the District Court principally relied for this result—*Smith* v. *Pro Football, Inc.*, 593 F.2d 1173 (D.C. Cir. 1978)—was conclusively undermined by the Supreme Court's subsequent decision in *NCAA* v. *Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984), and despite the fact that, as the District Court recognized, there was evidence of pro-competitive benefits created by the challenged restraint.

5. Whether the District Court erred as a matter of law when it denied defendants' motion for judgment following the jury verdict, despite the lack of any legally sufficient evidentiary basis for the jury's excessive damages award.

6. Whether the District Court erred as a matter of law when it admitted, over defendants' objection, evidence relating to the purpose and effect of the challenged employment terms, despite the fact that these issues had already been decided adversely to the defendants by the court's summary judgment ruling on antitrust violation and were thus irrelevant and unduly prejudicial to defendants on the issue of damages.

7. Whether, if the Court finds reversible error only with respect to violation issues, the Court should remand for a full retrial on violation, injury, and damages because the issue of violation is not so distinct and separable from the issues of injury and damages that a retrial limited only to issues of violation could be had without injustice.

8. Whether the District Court erred as a matter of law when it granted plaintiffs' request for a permanent injunction barring defendants from establishing "a uniform regular season salary for any category of players

whom [they] may at any time employ," and then declined to vacate the injunction, despite the lack of any imminent threat sufficient to justify such an injunction and the fact that the injunction interferes with the parties' labor law rights.

Respectfully submitted,

/s/ Richard W. Buchanan
HERBERT DYM
PETER J. NICKLES
GREGG H. LEVY
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Counsel for Appellants National Football League and Its Twenty-Eight Member Clubs

October 20, 1993